

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO
2 - - -
3 In the Matter of the :
4 Application of Ohio Power :
5 Company and Columbus :
6 Southern Power Company :
7 for Authority to Merge and: Case No. 10-2376-EL-UNC
8 Related Approvals. :
9 :
10 In the Matter of the :
11 Application of Columbus :
12 Southern Power Company :
13 and Ohio Power Company :
14 for Authority to Establish: Case No. 11-346-EL-SSO
15 a Standard Service Offer :
16 Pursuant to §4928.143, :
17 Ohio Rev. Code, in the :
18 Form of an Electric :
19 Security Plan. :
20 In the Matter of the :
21 Application of Columbus :
22 Southern Power Company :
23 and Ohio Power Company :
24 for Approval of Certain :
25 Accounting Authority. :
26 :
27 In the Matter of the :
28 Application of Columbus :
29 Southern Power Company to :
30 Amend its Emergency :
31 Curtailment Service :
32 Riders. :
33 :
34 In the Matter of the :
35 Application of Ohio Power :
36 Company to Amend its :
37 Emergency Curtailment :
38 Service Riders. :
39 :
40 In the Matter of the :
41 Commission Review of the :
42 Capacity Charges of Ohio :
43 Power Company and Columbus: Case No. 10-2929-EL-UNC
44 Southern Power Company. :
45

1 In the Matter of the :
 Application of Columbus :
 2 Southern Power Company for:
 Approval of a Mechanism to: Case No. 11-4920-EL-RDR
 3 Recover Deferred Fuel :
 Costs Ordered Under Ohio :
 4 Revised Code 4928.144. :

5 In the Matter of the :
 Application of Ohio Power :
 6 Company for Approval of a :
 Mechanism to Recover : Case No. 11-4921-EL-RDR
 7 Deferred Fuel Costs :
 Ordered Under Ohio Revised:
 8 Code 4928.144. :

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10 PROCEEDINGS

11 before Ms. Greta See and Mr. Jonathan Tauber,
 12 Attorney Examiners, at the Public Utilities
 13 Commission of Ohio, 180 East Broad Street, Room 11-A,
 14 Columbus, Ohio, called at 10:00 a.m. on Thursday,
 15 October 20, 2011.

16 - - -

17 VOLUME XI

18 - - -

21 ARMSTRONG & OKEY, INC.
 22 222 East Town Street, Second Floor
 Columbus, Ohio 43215-5201
 23 (614) 224-9481 - (800) 223-9481
 Fax - (614) 224-5724

24 - - -

25

1 APPEARANCES:

2 American Electric Power
 3 By Mr. Steven T. Nourse
 4 Mr. Matthew J. Satterwhite
 5 1 Riverside Plaza
 6 Columbus, Ohio 43215-2373
 7
 8 Porter, Wright, Morris & Arthur, LLP
 9 By Mr. Daniel R. Conway
 10 41 South High Street
 11 Columbus, Ohio 43215-6194

12 On behalf of the Applicants.

13
 14 FirstEnergy Service Company
 15 By Mr. Mark A. Hayden
 16 76 South Main Street
 17 Akron, Ohio 44308

18 Jones Day
 19 By Mr. David A. Kutik
 20 Ms. Allison Haedt
 21 North Point
 22 901 Lakeside Avenue
 23 Cleveland, Ohio 44114

24 Calfee, Halter & Griswold, LLP
 25 By Mr. James F. Lang
 1400 KeyBank Center
 800 Superior Avenue
 Cleveland, Ohio 44114

Calfee, Halter & Griswold, LLP
 By Mr. N. Trevor Alexander
 Ms. Laura McBride
 Fifth Third Center
 21 East State Street
 Columbus, Ohio 43215

On behalf of FirstEnergy Solutions Corporation.

- - -

1 APPEARANCES: (Continued)

2 McNees, Wallace & Nurick, LLC
3 By Mr. Frank P. Darr
4 Mr. Samuel P. Randazzo
5 Mr. Joseph Olikier
6 Ms. Gretchen Hummel
7 Fifth Third Center, Suite 1700
8 21 East State Street
9 Columbus, Ohio 43215-4288

10 On behalf of Industrial Energy Users.

11 Chester, Willcox & Saxbe, LLP
12 By Mr. Mark S. Yurick
13 Mr. John Bentine
14 Mr. Zach Kravitz
15 65 East State Street, Suite 1000
16 Columbus, Ohio 43215-4213

17 On behalf of the Kroger Company.

18 Janine L. Migden-Ostrander
19 Ohio Consumers' Counsel
20 By Mr. Terry L. Etter
21 Ms. Maureen R. Grady
22 Assistant Consumers' Counsel
23 10 West Broad Street, Suite 1800
24 Columbus, Ohio 43215-3485

25 On behalf of the Residential Ratepayers
of Columbus Southern Power Company and
Ohio Power Company.

Mike DeWine, Ohio Attorney General
By William Wright, Section Chief
Public Utilities Section
Mr. Werner L. Margard, III
Mr. Steven Beeler
Mr. John Jones
Mr. Thomas McNamee
Assistant Attorneys General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

On behalf of the staff of the Public
Utilities Commission of Ohio.

- - -

1 APPEARANCES: (Continued)

2 Ohio Partners for Affordable Energy
3 By Ms. Colleen L. Mooney
4 Mr. David C. Rinebolt
5 231 West Lima Street
6 Findlay, Ohio 45840

7 On behalf of Ohio Partners for Affordable
8 Energy.

9 Schottenstein, Zox & Dunn Co., LPA
10 By Mr. Christopher L. Miller
11 Mr. Gregory J. Dunn
12 Mr. Asim Z. Haque
13 250 West Street
14 Columbus, Ohio 43215

15 On behalf of the Association of
16 Individual Colleges and Universities,
17 City of Hilliard, City of Grove City.

18 Boehm, Kurtz & Lowry
19 By Mr. David Boehm
20 Mr. Michael L. Kurtz
21 Mr. Kurt Boehm
22 36 East Seventh Street, Suite 1510
23 Cincinnati, Ohio 45202

24 On behalf of Ohio Energy Group.

25 Ohio Environmental Council
By Mr. Nolan Moser
Mr. Trent A. Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

On behalf of the Ohio Environmental
Council.

Thompson Hine, LLP
By Mr. Philip B. Sineneng
Mr. Terrence A. Mebane
41 South High Street, Suite 1700
Columbus, Ohio 43215

On behalf of Duke Energy Retail.

1 APPEARANCES: (Continued)

2 Covington & Burling
3 By Mr. William Massey
4 1201 Pennsylvania Avenue
5 Washington, D.C. 20004

6 On behalf of The Compete Coalition.

7 Ohio Hospital Association
8 By Mr. Richard L. Sites
9 155 East Broad Street, 15th Floor
10 Columbus, Ohio 43215

11 Bricker & Eckler, LLP
12 By Mr. Thomas J. O'Brien
13 Mr. Matthew W. Warnock
14 100 South Third Street
15 Columbus, Ohio 43215-4291

16 On behalf of Ohio Hospital Association.

17 Bricker & Eckler, LLP
18 By Ms. Lisa Gatchell McAlister
19 Mr. Matthew W. Warnock
20 100 South Third Street
21 Columbus, Ohio 43215-4291

22 On behalf of Ohio Manufacturers
23 Association.

24 Vorys, Sater, Seymour & Pease, LLP
25 By Ms. Lija Kaleps-Clark
Mr. M. Howard Petricoff
Mr. Stephen M. Howard
Mr. Michael Settineri
P.O. Box 1008
52 East Gay Street
Columbus, Ohio 43216-1008

On behalf of Exelon Generation
Company, LLC, Constellation NewEnergy,
Inc., Constellation Energy Commodities
Group, Inc., Retail Energy Supply
Association, The Compete Coalition,
PJM Power Providers Group, and Direct
Energy.

1 APPEARANCES: (Continued)

2 Exelon Generation Company, LLC
3 By Ms. Sandy Grace
4 101 Constitution Avenue NW
5 Washington, D.C. 20001

6 Eimer, Stahl, Klevorn & Solberg, LLP
7 By Mr. David M. Stahl
8 Mr. Scott Solberg
9 224 South Michigan Avenue, Suite 1100
10 Chicago, Illinois 60604

11 On behalf of Exelon Generation Company,
12 LLC.

13 Mr. Henry W. Eckhart
14 1200 Chambers Road, Suite 106
15 Columbus, Ohio 43212

16 On behalf of the Sierra Club and Natural
17 Resources Defense Council.

18 Ohio Poverty Law Center
19 By Mr. Joseph V. Maskovyak
20 Mr. Michael Smalz
21 555 Buttles Avenue
22 Columbus, Ohio 43215

23 On behalf of Appalachian Peace and
24 Justice Network.

25 Keating, Muething & Klekamp PLL
By Mr. Kenneth P. Kreider
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

Ms. Holly Rachel Smith
HITT Business Center
3803 Rectortown Road
Marshall, VA 20115

On behalf of Wal-Mart Stores East, LP,
and Sam's East, Inc.

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APPEARANCES: (Continued)

Bell & Royer Co., LPA
By Mr. Barth E. Royer
33 South Grant Avenue
Columbus, Ohio 43215

On behalf of Dominion Retail, Inc.

Bricker & Eckler, LLP
By Mr. Christopher L. Montgomery
Mr. Terrence O'Donnell
100 South Third Street
Columbus, Ohio 43215

On behalf of Paulding Wind Farm, II.

Environmental Law & Policy Center
By Ms. Tara C. Santarelli
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

on behalf of the Environmental Law &
Policy Center.

SNR Denton US, LLP
By Ms. Emma F. Hand
Mr. Douglas G. Bonner
1301 K Street NW
Suite 600 East Tower
Washington, D.C. 20005

On behalf of Ormet Primary Aluminum
Corporation.

EnerNOC, Inc.
By Mr. Gregory J. Poulos
101 Federal Street, Suite 1100
Boston, Massachusetts 02110

On behalf of EnerNOC.

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APPEARANCES: (Continued)

Vorys, Sater, Seymour & Pease, LLP
By Ms. Lija Kaleps-Clark
Ms. Benita A. Kahn
P.O. Box 1008
52 East Gay Street
Columbus, Ohio 43216-1008

On behalf of the Cable Telecommunications
Association.

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Company Exhibits	Identified	Admitted	
12	IEU's Responses to CSPC and OPC's Second Set of Interrogatories, Request for Production of Documents, and Request for Admissions	1802	1939
13	Responses of IEU to CSPC and OPC's Fourth Set of Interrogatories, Request for Production of Documents, and Request for Admissions to IEU	1808	1939
14	Workpaper to calculate Stipulation cost	1832	1939
15	CSPC and OPC's Responses to the OCC in PUCO Case Nos. 11-346-EL-SSO and 11-348-EL-SSO, Sixteenth Set	1860	1939
16	FES's Supplemental Responses to CSPC and OPC's First Set of Interrogatories, Request for Production of Documents, and Request for Admissions	1940	1942
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IEU-Ohio Exhibits	Identified	Admitted
9A Direct Testimony of Kevin M. Murray, Public Version	VIII-1530	1939
9B Direct Testimony of Kevin M. Murray, Confidential Version	VIII-1530	1939
10 Exhibit KMM-11	VIII-1530	1939
13 CSPC and OPC's Response to FES's Discovery Request in PUCO Case Nos. 11-346-EL-SSO and 11-348-EL-SSO Twenty-First Set	1934	1939
14 Factual Admissions Made in Response to IEU-Ohio's Discovery Requests Upon Various Parties	1946	1948

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1 Thursday Morning Session,
2 October 20, 2011.

3 - - -

4 EXAMINER SEE: Let's go on the record.
5 Let's take brief appearances of the counsel here for
6 the various parties. Start with the company and go
7 around the table.

8 MR. NOURSE: Thank you, your Honor. On
9 behalf of AEP, Ohio Power Company, and Columbus
10 Southern Power Company, Steven T. Nourse and Matthew
11 J. Satterwhite, Daniel R. Conway. Thank you.

12 MR. ETTER: Good morning, your Honors.
13 On behalf of the residential utility customers, the
14 Office of the Ohio Consumers' Counsel, Terry L.
15 Etter, Assistant Consumers' Counsel, Maureen R.
16 Grady, Assistant Consumers' Counsel.

17 EXAMINER SEE: Mr. Etter, you're going to
18 have to speak up.

19 MR. ETTER: Hopefully I won't have to
20 talk much today.

21 MR. HAYDEN: Good morning, your Honors.
22 On behalf of FES, Mark Hayden and David Kutik.

23 MR. HOWARD: Good morning, your Honors.
24 On behalf of Constellation NewEnergy, Constellation
25 Energy Commodities Group, Exelon Energy Group, Retail

1 Energy Supply Association, Compete Coalition, and PJM
2 Power Providers Group, Vorys, Sater, Seymour & Pease,
3 by M. Howard Petricoff, Lija Kaleps-Clark, and Steven
4 M. Howard. Thank you.

5 MR. RANDAZZO: Your Honors, on behalf of
6 the Industrial Energy Users of Ohio I'd like to enter
7 the appearance of Mr. Frank Darr, Mr. Joseph Oliker,
8 and reentering an appearance for myself, Sam
9 Randazzo, as reflected previously in the record.

10 MS. HAND: Good morning, your Honor.
11 Emma Hand and Douglas G. Bonner for Ormet Primary
12 Aluminum Corporation.

13 MR. YURICK: Good morning, your Honors.
14 On behalf of the Kroger Company, law firm of Chester,
15 Willcox & Saxbe, John Bentine, Mark Yurick, Zach
16 Kravitz. Thank you.

17 MR. KURTZ: For the Ohio Energy Group,
18 Mike Kurtz and Kurt Boehm.

19 MS. McALISTER: On behalf of the OMA
20 Energy Group, Lisa McAlister and Matt Warnock.

21 MR. MARGARD: On behalf of the
22 Commission, Assistant Attorneys General Warner
23 Margard, John Jones, Steven Beeler, and Thomas
24 McNamee.

25 MR. MONTGOMERY: Good morning, your

1 Honor. On behalf of Paulding Wind Farm, LLC, Chris
2 Montgomery and Terrence O'Donnell. Thank you.

3 EXAMINER SEE: We'll resume with
4 Mr. Murray.

5 MS. McALISTER: Your Honor.

6 EXAMINER SEE: Yes, Ms. McAlister.

7 MS. McALISTER: Before Mr. Murray goes on
8 the stand I'd like to state for the record that the
9 OMA Energy Group does not have any questions for
10 Mr. Murray and neither does anybody else represented
11 by attorneys at Bricker, and with your permission I'd
12 like to make a brief statement for the record.

13 EXAMINER SEE: Okay.

14 MS. McALISTER: To the extent that my
15 cross-examination questions of Mr. Bowser may have
16 been perceived by any person in any way as an
17 explicit or implicit questioning of IEU-Ohio's
18 motives for not supporting the stipulation, I and
19 Bricker had and have no substantial basis to question
20 IEU-Ohio's motives for not signing the stipulation
21 and to challenge the analytical quality of the work
22 reflected in the testimony of Mr. Bowser and Mr.
23 Murray.

24 EXAMINER SEE: Thank you.

25 Mr. Murray, I'll remind you that you were

1 placed under oath before and you continue to be under
2 oath at this time. Have a seat.

3 Mr. Randazzo.

4 MR. RANDAZZO: Yes, your Honor, just
5 refreshing everyone's recollection, if we may,
6 Mr. Murray had previously completed his direct
7 examination to sponsor his testimony, we had dealt
8 with motions to strike.

9 EXAMINER SEE: Yes.

10 MR. RANDAZZO: With permission of the
11 parties and to help clarify the record I would like
12 to ask Mr. Murray one additional question since he
13 has now appeared after Mr. Fortney and his testimony
14 was -- direct testimony was presented prior to
15 Mr. Fortney and Mr. Fortney's testimony today is a
16 little bit different than his prefiled testimony.

17 I would just like to ask Mr. Murray the
18 following question: Mr. Murray, the testimony that
19 you submitted previously and sponsored previously was
20 without the benefit of the oral testimony provided by
21 Mr. Fortney. And to that question I believe
22 Mr. Murray would say "Yes." But -- at least I hope
23 so. But, in any event, in fairness I just think it
24 helps to clarify the record given the sequence of
25 witnesses here.

1 EXAMINER SEE: Okay, Mr. Randazzo. Go
2 ahead.

3 - - -

4 KEVIN M. MURRAY

5 being previously duly sworn, as prescribed by law,
6 was examined and testified further as follows:

7 DIRECT EXAMINATION (Continued)

8 By Mr. Randazzo:

9 Q. Mr. Murray, on page 44 at question 50 you
10 begin to discuss your review of Mr. Fortney's
11 analysis of the MRO versus the ESP test; is that
12 correct?

13 A. Yes.

14 Q. And the testimony that you sponsored
15 previously was testimony that was based upon the
16 knowledge that you had prior to Mr. Fortney taking
17 the stand and providing oral testimony in this
18 proceeding; is that correct?

19 A. Yes.

20 MR. RANDAZZO: Thank you. That's all I
21 have, your Honor.

22 (Discussion off the record.)

23 EXAMINER SEE: Let's start
24 cross-examination of Mr. Murray.

25 MR. NOURSE: Your Honor, I believe the

1 settling parties agreed that I would go first and
2 cross.

3 EXAMINER SEE: Okay. Go ahead.

4 MR. NOURSE: And I also have an
5 additional motion to strike at this time, your Honor.
6 And this is consistent with the rulings on Friday
7 regarding OCC Witness Duann. Mr. Murray's Exhibit
8 Nos. 5 and 6, I believe, are not consistent with the
9 remand order. KMM-5 reflects a POLR charge, the 2011
10 POLR charge, as part of the baseline rate in his MRO
11 analysis, I believe line 22. And Exhibit 6 -- that
12 line 22 reference applies to both the Ohio Power and
13 the Columbus Southern portion of KMM-5.

14 EXAMINER SEE: So you're just asking to
15 strike that line?

16 MR. NOURSE: Well, the numbers flow from
17 that figure, your Honor. And I think, similar to
18 Dr. Duann, the number presented in the exhibit I
19 believe it's fair to say that it does not reflect the
20 remand order and as the companies were directed to
21 do, and other parties purported to do, reflecting the
22 remand was supposed to be reflected in revisions, so
23 similarly in KMM-6, KMM-6 I believe reflects a
24 reduction for environmental carrying costs in line 20
25 on both pages, Columbus Southern and Ohio Power. And

1 consequently the ESP benefit numbers that are
2 presented on KMM-6 also are not consistent with the
3 remand order.

4 And in the context of the testimony
5 itself and the text, there's some statements and
6 references that rely on those exhibits I'd like to
7 also point out and move to strike. The first one is
8 on page 41 starting on line 21 which references A48
9 should be Q48, but that carries through to the
10 entirety of page 42 and ends on line 13 of page 43.

11 EXAMINER SEE: I'm sorry, what was that
12 reference again starting on page 41, Mr. Nourse?

13 MR. NOURSE: 41 starting on line 21 with
14 question 48, and then the question and answer
15 continues through to line 13 on page 43 and that
16 discussion relates to the numbers presented in
17 Exhibits 5 and 6.

18 The next one is on page 45, in the answer
19 53, after the word "yes" there's a sentence, again
20 references the analysis in Exhibits 5 and 6 and I
21 would move to strike the sentence "There are
22 additional costs" beginning on line 14 and ending
23 with "KMM-6" on line 16.

24 And the final passage, your Honor, is on
25 page 46 beginning on line 17 with the phrase "for

1 example" and it continues on the remainder of page 46
2 onto the end of line 6 on page 47.

3 All of these statements present numbers
4 from those two exhibits that reflect analysis that
5 does not comport with the remand order so I move that
6 they be stricken in accordance with your rulings
7 Friday afternoon with respect to Dr. Duann.

8 EXAMINER SEE: Mr. Randazzo, did you want
9 to respond?

10 MR. RANDAZZO: If I may, your Honors.
11 Mr. Murray's schedules show individual line items and
12 the math, he describes the math that he followed in
13 his testimony. In this case to the extent that the
14 Commission believes that any of the lines are
15 inappropriate in his analysis, it is simple math to
16 reflect the consequences in the bottom-line numbers.

17 So I don't want to quarrel with the prior
18 rulings, your Honor, but it seems to me that the
19 companies themselves have put in alternative
20 scenarios showing their version of what the
21 Commission's remand order means and, at your
22 direction, an alternative version.

23 We have folks that are talking about
24 conditional benefits, nonquantitative, out in the
25 future, for purposes of trying to justify why it is

1 that they think that the ESP stipulation is better
2 than the MRO. So the scenario that is illustrated
3 here is explicit, the math is explicit, the
4 Commission can remove the numbers, the math is
5 described, the derivative consequences in the math
6 will lead to a bottom-line number, and I think the
7 company is wrong in attempting to strike the
8 testimony and the various exhibits for that reason.

9 But if you're going to strike anything,
10 it would be the lines that you think are offensive
11 relative to your prior rulings with the math being
12 followed to produce, of course, a different
13 bottom-line number. It doesn't change the conclusion
14 offered by the witness as you can see from the bottom
15 line in each of those exhibits.

16 But, your Honor, I think it's helpful to
17 have the testimony in to illustrate the math that was
18 followed by Mr. Murray, he explains it in complete
19 detail, and to the extent that any of the numbers of
20 Mr. Murray -- the Commission judges that any of the
21 numbers that Mr. Murray has, including the lines
22 referenced by the company, should be modified, the
23 Commission can insert the number that it judges to be
24 based on the record and apply the mathematical
25 formula if the Commission finds that Mr. Murray's

1 mathematical methods are appropriate.

2 So with that, your Honor, I would object
3 to the motion to strike in its entirety in view of
4 the rulings that have allowed witnesses to talk about
5 conditional benefits and scenarios, alternative
6 scenarios, including those associated with events
7 that are unknown and are conditioned on the
8 Commission approving this or that many years hence.

9 MR. NOURSE: Your Honor, just briefly.
10 Mr. Randazzo is suggesting that the Commission do the
11 math and revise Mr. Murray's testimony. I don't
12 think that's what the parties were directed to do,
13 and the fact is we don't know what the bottom-line
14 impact on these exhibits would be if we adjusted for
15 the math. Unlike the conditional benefit example
16 being referenced, these two things that I mention,
17 the POLR including the full POLR in the baseline, is
18 simply wrong under the remand order and all the other
19 parties have been directed to present revised
20 testimony and have presented revised testimony.

21 And the same thing with the
22 environmental, KMM-6, that just carries through an
23 adjustment that's already been rejected and clutters
24 up the record with numbers that are not correct.

25 MR. KUTIK: Your Honor, may I be heard?

1 EXAMINER SEE: Mr. Kutik.

2 MR. KUTIK: Your Honor, the objection
3 that, quote, it's not correct, end quote, is an
4 objection which is basically what counsel has made --
5 is an objection that goes to the weight of the
6 evidence, not as to its admissibility. Counsel spoke
7 about there being orders to correct testimony. The
8 only party that was directed to do a revised version
9 of testimony was the company; no one else did that.

10 With respect to the changing nature of
11 the landscape, Mr. Murray's testimony, in fact, does
12 account for it given the fact that he has introduced
13 new schedules and I would point the Bench to his
14 Exhibit 11 which is a revised version of his
15 calculation.

16 So if Mr. Nourse has a problem with
17 Mr. Murray's calculations, he can address that in
18 cross-examination, he can address that in briefs, and
19 Mr. Murray's testimony stands as it will stand.

20 EXAMINER SEE: After reviewing the second
21 round of motions to strike Mr. Murray's testimony,
22 the Bench is going to allow them to stand. We will
23 proceed with cross-examination.

24 MR. NOURSE: Okay, your Honor.

25 - - -

CROSS-EXAMINATION

1
2 By Mr. Nourse:

3 Q. Good morning, Mr. Murray.

4 A. Good morning.

5 Q. You're the executive director of IEU?

6 A. Yes.

7 Q. Okay. And in what capacity does that
8 position serve the organization?

9 A. The executive director is basically what
10 I would characterize as a managerial position to
11 address the business affairs of the organization as
12 needed.

13 Q. Do you make any decisions in that
14 capacity?

15 A. Yes.

16 Q. Such as what?

17 A. I might execute contracts on behalf of
18 the organization. I may make decisions to, for
19 example, retain outside witnesses or participate in
20 that decision I guess is a better way to characterize
21 it.

22 Q. Do you make decisions regarding cases,
23 case decisions with respect to Commission
24 proceedings?

25 A. No. I would have input into decisions,

1 but ultimately case decisions are reflective of
2 discussions between counsel and members of the
3 organization.

4 Q. Okay. So with respect to the situation
5 we're currently considering, the option of a
6 stipulation and whether IEU decides to join or oppose
7 that stipulation, can you tell me the process that
8 was used to reach that decision?

9 MR. RANDAZZO: I object.

10 EXAMINER SEE: On what basis,
11 Mr. Randazzo?

12 MR. RANDAZZO: Your Honor, that process
13 is protected attorney-client communications.

14 MR. NOURSE: Your Honor, I'm not asking
15 about any conversations with counsel. I'm asking
16 from an organizational standpoint what was the
17 process for deciding to join or oppose the
18 stipulation. I believe there's been other questions,
19 similar questions, of organizations that have
20 testified including OEG and AICUO.

21 MR. RANDAZZO: I'll withdraw the
22 objection.

23 EXAMINER SEE: You can answer the
24 question.

25 MR. RANDAZZO: As long as it's focused on

1 the process.

2 EXAMINER SEE: Answer the question,
3 Mr. Murray.

4 A. The process, as stipulations are under
5 negotiation among parties, we will have periodic
6 communication with members of the organization to
7 update them as to the status of the negotiations.
8 Ultimately, to the extent the stipulation is reached,
9 we will share that with the members in its entirety.

10 Typically we will have perhaps a
11 conference call in which we will offer up or the
12 organization and its counsel will offer up their
13 understanding of the effect of the stipulation,
14 individual companies make an assessment of what the
15 stipulation would mean to the rates they pay for
16 electric service, and there is a recommendation
17 whether or not to support or oppose a stipulation.
18 It ultimately is approved or disapproved by the
19 members of the organization.

20 Q. So you're saying the decision is made
21 by -- to join or oppose the stipulation by the
22 members of IEU?

23 A. That's correct.

24 Q. And is that achieved through a vote?

25 A. If necessary.

1 Q. And was that process followed for the
2 stipulation we're talking about today?

3 A. Yes.

4 Q. And was that process -- did that process
5 occur after -- well, let me ask you -- strike that
6 question.

7 When did that process occur with respect
8 to this stipulation?

9 A. I don't recall an exact date. I believe
10 it was after the technical conference as well as the
11 provision of some worksheets, workpapers by the
12 company that allowed parties to get a better
13 numerical assessment of what the stipulation impact
14 would be on members.

15 Q. So, first of all, let me ask you about
16 the last part you stated. You're saying it was based
17 on a rate impact analysis of the stipulation?

18 A. There were some workpapers provided by
19 the company, my recollection is they were provided
20 sometime after the stipulation was filed, I don't
21 recall if that was before or after the technical
22 conference, but my recollection is the decision by
23 the members whether or not to oppose or support the
24 stipulation was ultimately reached sometime after the
25 technical conference. That's my recollection as to

1 the date. Again, I don't recall the exact date.

2 Q. Okay. And is it correct that you had
3 attended settlement negotiations representing IEU?

4 A. I attended some settlement negotiations.

5 Q. And did you attend the last meeting which
6 I believe IEU was present on August 26th?

7 A. I don't recall.

8 Q. You don't recall?

9 A. I don't recall the exact dates in which I
10 attended. I attended some meetings, probably not
11 all.

12 Q. Did the IEU's consideration, the members
13 voting against the stipulation, occur during the time
14 that IEU was involved with negotiations or after that
15 time?

16 A. Again, I think I just testified it was
17 after the technical conference. So it was after the
18 stipulation was filed.

19 Q. Well -- oh, after the technical
20 conference that occurred after the stipulation
21 occurred.

22 A. That's correct.

23 Q. Okay. Gotcha.

24 Now, what interest was served by IEU in
25 this proceeding in terms of its intervention in the

1 SSO case, let's say?

2 A. Can you clarify what you mean by
3 "interest"?

4 Q. Well, is it accurate to say that IEU's
5 intervention was based on an interest in the price,
6 adequacy, and reliability of retail electric service?

7 A. For its members served by Columbus
8 Southern Power and Ohio Power Company, that's
9 correct.

10 Q. Okay. So IEU's focus in this proceeding
11 would be on price, adequacy, and reliability of
12 electric supply?

13 A. That's an accurate general
14 characterization. Obviously, there's -- we need to
15 translate that into more specific deliverables in
16 terms of an outcome.

17 Q. Are there other major concerns IEU -- you
18 look out for IEU other than price, adequacy, and
19 reliability of electric supply?

20 A. Well, one of the considerations that IEU
21 would certainly take into account in the context of
22 an electric security plan proceeding is whether or
23 not a stipulation was lawful.

24 Q. Stipulation was what?

25 A. Lawful.

1 Q. Lawful. All right. And you weren't
2 involved in that determination, were you?

3 A. No. IEU has counsel that helps in those
4 types of decisions.

5 Q. Now, did you examine the rate impact of
6 the proposed stipulation relative to IEU members in
7 deciding whether to oppose the stipulation?

8 A. I was involved in the preparation of
9 spreadsheets that we developed to illustrate the
10 effects for certain rate schedules. We developed
11 those for both Ohio Power Company and Columbus
12 Southern Power Company. We distributed them to the
13 members to allow the members to model individual
14 impacts.

15 In some cases there were specific
16 IEU-Ohio members that had some -- I had some
17 interaction with to help them understand the
18 spreadsheet and make sure that they were trying to
19 confirm that they were accurately modeling the impact
20 of the stipulation.

21 Q. So is it accurate that you have not
22 calculated the rate impact of the proposed
23 stipulation on each member of IEU?

24 A. I have not.

25 Q. And has anyone at IEU done that?

1 A. I don't know.

2 Q. Who would know the answer to that
3 question?

4 A. Other individuals that are employed on
5 behalf of IEU.

6 Q. So you don't know whether the rate impact
7 on IEU members has been done and factored into the
8 decision to oppose the stipulation?

9 A. Certainly we provided the information to
10 individual members to allow them to model the
11 individual rate impacts. It would be my expectation
12 that they used that impact to help formulate their
13 decision whether or not to support or oppose the
14 stipulation.

15 Q. Okay. I thought you said earlier that
16 IEU evaluated rate impacts of a case or a stipulation
17 as part of the process for deciding whether to oppose
18 the stipulation or join it.

19 A. There is information that was provided
20 both in the stipulation itself as well as the
21 testimony supporting the stipulation, the company's
22 workpapers, that will allow you to assess the overall
23 impact of the ESP. In order to assess the impact on
24 individual customers you need to do a more detailed
25 analysis. As I indicated, we provide tools to the

1 members of IEU to allow them to conduct that analysis
2 and assist them to the extent that they need
3 assistance in using those tools.

4 MR. NOURSE: Okay. Your Honor, I'd like
5 to mark as an exhibit AEP Exhibit No. 12. It's a
6 discovery response from IEU to Columbus Southern and
7 Ohio Power, second set.

8 EXAMINER SEE: The exhibit is so marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Murray, could you turn to
11 interrogatory 44 in that packet. Are you there?

12 A. I'm there.

13 Q. Okay. And this question asks to identify
14 the members of IEU that would see a decrease in 2012
15 under the stipulation, and it goes on to ask for
16 certain specified members there. Do you see that
17 question?

18 A. Yes.

19 Q. And are all those firms that are listed
20 members of IEU?

21 A. I believe so.

22 Q. And answer states that "IEU has not
23 performed the calculations" in response to this
24 interrogatory for 46, 48, and 50; is that correct?

25 A. Yes.

1 Q. 46 is the same question for the year 2013
2 for the same firms; is that correct?

3 A. Yes.

4 Q. And 48 is the same question for the year
5 2014 for the same IEU members, correct?

6 A. Yes.

7 Q. And question 50 is the same with respect
8 to the year 2015; is that correct?

9 A. Yes.

10 Q. So your answer in 44 answers for all of
11 those years, correct?

12 A. Yes.

13 Q. Okay. And then you have another sentence
14 in here -- first of all, let me verify that you are
15 familiar with these responses and they are an
16 accurate copy of your recollection, these responses.

17 A. I recall seeing them.

18 Q. And the second sentence goes on to say
19 that the information provided by the companies does
20 not reflect the full cost of the settlement.

21 A. Which second sentence are you referring
22 to?

23 Q. I'm going back to question 44 which
24 addresses all those other questions I believe in one.

25 A. Okay. I see it.

1 Q. And can you explain what you mean by that
2 sentence?

3 MR. RANDAZZO: Just so the record's
4 clear, we're talking about the sentence that begins
5 "Based on information"?

6 MR. NOURSE: Yes.

7 MR. RANDAZZO: Thank you.

8 A. The full cost of the settlement ESP is
9 going to be a function of what I would characterize
10 as placeholders in the stipulation. I discuss some
11 of them in my testimony beginning at page 47, line
12 19. They are costs associated with the company's
13 alternative energy compliance, costs associated with
14 storm damage recovery mechanism, costs associated
15 with pool termination or modification, costs of up to
16 350 megawatts of customer sited combined heat and
17 power, waste heat recovery and distributed
18 generation, and additionally costs associated with
19 MR6 which I believe is an acronym standing for
20 Muskingum River 6 which is a gas-fired generating
21 unit that is a placeholder in the stipulation.

22 Q. And so that's what you meant by that, the
23 balance of answer 44 was referring to those?

24 A. Yes. There are some elements in the
25 stipulation that have not been quantified.

1 Q. Okay. Now, those answers weren't
2 supplemented, to your knowledge, right?

3 A. I don't recall.

4 Q. And as you sit here today do you know if
5 any IEU members will experience rate decreases under
6 the stipulation in 2012, '13, '14, and '15?

7 MR. RANDAZZO: I object.

8 EXAMINER SEE: On what grounds,
9 Mr. Randazzo?

10 MR. RANDAZZO: Confidential information.

11 MR. NOURSE: Well, we just covered the
12 whole subject through discovery. I'm asking him to
13 supplement on the stand if he has any knowledge about
14 the same set of questions and answers that we just
15 went through. He stated they haven't been formally
16 supplemented.

17 MR. KUTIK: That wasn't his question. He
18 said he didn't know.

19 MR. NOURSE: Correct. I'm not aware of
20 any either.

21 MR. KUTIK: Well, the record as it stands
22 now is the witness doesn't know.

23 MR. NOURSE: He doesn't know if they're
24 supplemented, your Honor, but I asked him a different
25 question.

1 EXAMINER SEE: The objection is
2 overruled.

3 THE WITNESS: Could I have the question
4 reread?

5 (Record read.)

6 A. I believe there are some IEU members that
7 will see a decrease in 2012, I believe in the years
8 thereafter everybody will see a rate increase.

9 Q. Okay. Did IEU calculate the results
10 under the MRO test in deciding whether to support or
11 oppose the stipulation?

12 A. There are results under the MRO test that
13 are reflected in my testimony, so, yes.

14 Q. Maybe you didn't -- let me ask you again.
15 Did IEU calculate results to the MRO test in deciding
16 to join or oppose the stipulation, in other words,
17 prior to the filing of your testimony?

18 A. There were certainly -- my recollection
19 is we did earlier calculations to illustrate various
20 scenarios and shared those with members, so yes, that
21 information -- an early version of what's reflected
22 in my testimony was shared with members.

23 Q. So are you testifying that the MRO test
24 results that you've prepared were considered by IEU
25 members in deciding whether or not to vote in favor

1 or in opposition to the stipulation?

2 A. I believe what I stated was my
3 recollection is an earlier version of an MRO test was
4 shared with members, so we were certainly trying to
5 illustrate to members the results of what we thought
6 would be under various scenarios. I don't recall if
7 the numbers that we shared with members are precisely
8 what ended up in my final testimony.

9 Q. And I'm not asking you about various
10 scenarios. I'm asking you about the stipulation and
11 whether you performed or anyone at IEU performed an
12 MRO test based on the stipulation and presented that
13 as part of the decision to join or oppose to IEU
14 members.

15 A. Again, my recollection is we provided
16 that type of analysis and shared it with members.

17 Q. Well, you're changing my question in your
18 answer. I just want to try to be clear here. Are
19 you saying that at the time you presented information
20 to the IEU members for purposes of deciding whether
21 to join or oppose the stipulation you presented an
22 MRO test results analysis based on the stipulation?

23 A. My recollection is yes, we did an early
24 analysis where we illustrated the total company
25 basis, the effects of the ESP stipulation against

1 what we thought the effects would be under an MRO
2 scenario.

3 Q. So you did a total company and not
4 separately for CSP and Ohio Power.

5 A. I misstated. The results were company
6 specific based on Columbus Southern Power Company and
7 Ohio Power Company.

8 Q. Okay. Move to a different subject.

9 MR. NOURSE: Your Honor, I'd like to mark
10 as an exhibit AEP Exhibit 13. These are IEU replies
11 to Columbus Southern and Ohio Power, the fourth set.

12 EXAMINER SEE: AEP Exhibit 13 is so
13 marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. NOURSE: Thank you, your Honor.

16 Q. Mr. Murray, are these interrogatory
17 responses from IEU to AEP Ohio?

18 A. They appear to be.

19 Q. And are you familiar with this set of
20 questions?

21 A. I have seen them previously.

22 Q. Okay. So directing your attention first
23 to interrogatory 66, it's accurate to say that
24 IEU-Ohio is registered as a CRES provider in Ohio?

25 A. Yes.

1 Q. And does IEU serve as a CRES provider for
2 its members?

3 A. Could you repeat the question again?

4 Q. Does IEU serve as a CRES provider for its
5 members?

6 A. Not presently for providing generation
7 service.

8 MR. NOURSE: I'm sorry. Could I have
9 your answer reread.

10 (Record read.)

11 Q. Okay. What services are provided?

12 A. IEU-Ohio acts as a curtailment service
13 provider as indicated in the question and answer to
14 interrogatory 74.

15 Q. And that's considered a CRES service?

16 MR. RANDAZZO: I object. That's a legal
17 question.

18 Q. Well, your understanding.

19 MR. NOURSE: I asked him about CRES
20 services and he responded with curtailment service
21 provider, so I'm just asking a follow-up
22 clarification question.

23 MR. KUTIK: Actually the question was
24 what services does --

25 EXAMINER SEE: Thank you.

1 MR. KUTIK: -- IEU provide.

2 EXAMINER SEE: Yes.

3 THE WITNESS: Can I have the question
4 reread?

5 EXAMINER SEE: Yes, you can.

6 MR. NOURSE: Your Honor, I can try to
7 rephrase it to clarify.

8 Q. (By Mr. Nourse) Mr. Murray, you stated in
9 response to my question about CRES services that
10 you're not providing generation services, correct?

11 A. Yes.

12 Q. As a CRES. And my next question is what
13 other services is IEU providing to its members as a
14 CRES provider?

15 A. And I believe I indicated, as
16 interrogatory 74 indicates, IEU is a curtailment
17 service provider for CSP.

18 Q. And your understanding is that that's a
19 CRES service in Ohio?

20 A. My understanding is that, yes, that would
21 require certification from the Commission.

22 Q. And is that considered an aggregation
23 service under your understanding?

24 A. Yes, you could certainly put it under
25 that classification. It's a type of service that

1 probably doesn't neatly fit with the labels that the
2 Commission has identified for certification because I
3 believe the types of categories that the Commission
4 developed back in 2000 probably predated the
5 existence of curtailment service providers in Ohio.

6 Q. Okay. Curtailment service providers is a
7 term that's used in the PJM tariff; is that correct?

8 A. That's my understanding.

9 Q. And acting as a curtailment service
10 provider means that you're providing -- you're
11 brokering demand response services to IEU members; is
12 that accurate?

13 A. I don't know that I would agree with the
14 brokering description. A curtailment service
15 provider is a special class of membership in PJM.
16 PJM operates as a limited liability corporation and
17 it's my understanding that in order to transact or do
18 any business in its electricity markets you must be a
19 member of PJM. And PJM has established curtailment
20 service providers as a special class of membership
21 specifically to facilitate the provision of demand
22 response in its markets.

23 Q. Okay. And IEU's participation in these
24 cases that we're here today about, was it acting in
25 its capacity as a CRES provider in participating in

1 these cases?

2 MR. RANDAZZO: Could I have the question
3 read back, please?

4 (Record read.)

5 MR. RANDAZZO: Thank you.

6 A. IEU was acting on behalf of its members.

7 Q. And in pursuing -- we talked earlier
8 about the intervention basis for IEU being able to
9 address price adequacy and reliability of electric
10 supply, correct?

11 A. Yes.

12 Q. And does that purpose include IEU's role
13 as a CRES supplier?

14 A. IEU acts as a CRES provider in order to
15 provide service to member companies, so tangentially
16 I think you could say it may be related.

17 Q. In your answer when you talk about
18 providing service to members, are you saying CRES
19 services?

20 A. Again, I think I've previously testified
21 IEU currently acts as a curtailment service provider
22 to members in Ohio, it's my understanding that that
23 requires certification as a CRES.

24 Q. And just to be clear, you're saying that
25 that's the only CRES-related service that IEU

1 presently provides to its members?

2 A. That's my recollection.

3 Q. Okay. Does IEU the CRES provider have
4 any employees?

5 A. My understanding is IEU as the
6 corporation doesn't have any employees. It utilizes
7 individuals in a contract capacity. For example, I'm
8 executive director of IEU, but as my testimony
9 indicates I'm employed by McNees, Wallace & Nurick,
10 LLC.

11 Q. So does IEU the CRES entity have
12 agreements with other CRES providers in providing
13 service to its members?

14 A. I don't recall. Or I don't know.

15 Q. Okay. Let me ask you about the joint
16 defense agreement. I believe there's been discussion
17 on the record and I don't know if you've been present
18 during that or not, about a joint defense agreement
19 between IEU and other parties that are opposing the
20 stipulation entered into around September 1st, I
21 believe. Are you familiar with that?

22 A. I'm aware that there is a joint defense
23 agreement. I have never seen the document.

24 Q. You're aware of the joint defense
25 agreement?

1 A. Again, I just testified I'm aware that
2 one exists. I have not seen the actual document.

3 Q. What's your understanding of the joint
4 defense agreement?

5 A. My layman's understanding is that a joint
6 defense agreement, when parties agree to it, it is
7 intended to I think broaden the scope of what would
8 be considered the attorney-client privilege. It
9 allows those parties to have communications that I
10 guess would be considered confidential.

11 Q. And would you also agree that the premise
12 would be that those parties are of a common interest
13 and have the same goals, essentially, in the
14 litigation?

15 MR. RANDAZZO: I object, your Honor. We
16 have a generic discussion about joint defense
17 agreements. Mr. Murray's indicated he hasn't seen
18 the one that Mr. Nourse is inquiring about. I don't
19 know how the general understanding of these documents
20 relates to any issues that are in this case, but if
21 there is any relevancy, it has to be related to the
22 specific document which Mr. Murray has not seen.

23 MR. NOURSE: Well, I'm exploring the
24 specific joint defense agreement which he said he was
25 aware of. I'm exploring his understanding in the

1 context of that agreement, that there have been
2 issues raised in this case about negotiations, and so
3 I think I'm entitled to ask him a few questions about
4 that.

5 MR. KUTIK: I have an objection on a
6 different basis and that is it calls for a legal
7 conclusion.

8 MR. ETTER: OCC joins the objection.

9 MR. NOURSE: Your Honor, the witness is
10 the one that raised the attorney-client privilege
11 issue, and I'm not asking anything about legal
12 issues.

13 How about if I ask a different question
14 and see where that leads?

15 Q. (By Mr. Nourse) Mr. Murray, is it your
16 understanding that the determination to jointly
17 oppose the stipulation was made by the parties that
18 entered into the joint defense agreement prior to
19 entering into the joint defense agreement?

20 MR. KUTIK: Objection. To the extent it
21 calls for speculation of what other parties thought.

22 MR. NOURSE: I'm asking him based on his
23 own knowledge.

24 MR. RANDAZZO: No foundation. And I
25 object.

1 EXAMINER SEE: The objection is
2 sustained.

3 Q. (By Mr. Nourse) Mr. Murray, do you know,
4 had IEU determined it would oppose the stipulation
5 when it entered into the joint defense agreement?

6 A. I believe earlier in your questions you
7 identified a specific date associated with a joint
8 defense agreement. I don't recall sitting here what
9 that was. As I previously testified, the ultimate
10 decision by IEU whether or not to oppose or support
11 the stipulation occurred after the technical
12 conference; I believe the joint defense agreement was
13 in place prior to that date but I don't know the
14 exact date.

15 Q. Okay, Mr. Murray, let me shift gears.
16 Now, you're a technical specialist for the law firm.

17 A. That's my title.

18 Q. What does that entail generally?

19 A. I provide analytical support to the
20 attorneys in the firm and also provide analytical
21 support to IEU members as well as other clients of
22 the firm.

23 Q. And part of your duties, are they not, to
24 review filings and workpapers that go with filings?

25 A. Yes.

1 Q. And as part of that evaluation activity
2 is it accurate to say that you frequently work with
3 Excel spreadsheets?

4 A. I use Excel spreadsheets. Whether or not
5 you want to characterize that as frequent or
6 infrequent would be a matter of individual judgment I
7 guess. I certainly don't use Excel spreadsheets on a
8 day-to-day basis.

9 Q. Okay. So you're not considering yourself
10 as a proficient user of Excel, or do you?

11 A. I'm proficient in the features I use in
12 Excel. There are certainly features in Excel that I
13 don't use on a day-to-day basis.

14 Q. Okay. We'll get back to that later. Can
15 I clarify your overall recommendation in your
16 testimony, is it simply to reject the stipulation?

17 A. Do you have a specific reference in my
18 testimony you're referring to?

19 Q. No, I don't.

20 THE WITNESS: Could I have the question
21 reread?

22 (Record read.)

23 A. Beginning on page 53 of my testimony
24 where I offer conclusions, my overall conclusion as
25 reflected in question 61 and the answer that follows

1 is that the ESP stipulation be rejected, however, to
2 the extent that the Commission disagrees with that
3 recommendation I've offered up several suggested
4 modifications to the stipulation in my testimony.

5 Q. And is it your understanding that the
6 companies have to accept those modifications if the
7 Commission takes up that part of your recommendation?

8 A. That would be my understanding.

9 Q. And I want to drill down a little bit on
10 some of the individual cases being addressed in the
11 stipulation and get IEU's position for clarity on
12 those. And the first one is the merger of Columbus
13 Southern Power and Ohio Power. Is there opposition
14 from IEU on the merger proposal outside the context
15 of the stipulation?

16 MR. RANDAZZO: I object.

17 EXAMINER SEE: Grounds, Mr. Randazzo?

18 MR. RANDAZZO: The stipulation has been
19 presented by a package. There is a specific section
20 of the stipulation that says that it's an integrated
21 settlement and that individual items can't be severed
22 or separated. The focus of this hearing is the
23 reasonableness of the settlement. The process
24 associated with these other cases is being held in
25 abeyance at the request of signatory parties. I

1 think the question is irrelevant.

2 MR. NOURSE: Let me try a different way.

3 Q. Mr. Murray, in your recommendations and
4 testimony about the stipulation, which is a package
5 of terms and conditions in various cases, do you have
6 specific terms or recommendations relating to the
7 merger proposal component of the stipulation?

8 MR. RANDAZZO: For the record, could
9 Mr. Nourse identify the merger provision in the
10 stipulation.

11 MR. NOURSE: I can do that. It's under
12 section IV of the stipulation and paragraph 3 on page
13 24.

14 THE WITNESS: Could I have the question
15 reread?

16 Q. We'll try it again. Do you have
17 paragraph 3 on page 24 of the stipulation?

18 A. Yes.

19 Q. Okay. And this part of the stipulation
20 would resolve the proposed merger, so does IEU --
21 does your testimony on this subject have any specific
22 recommendations?

23 MR. RANDAZZO: I object to the form of
24 the question. Mr. Nourse said that this section
25 resolves the proposed merger. What this section says

1 is that the Commission would approve the merger.

2 MR. NOURSE: It resolves it by approving
3 it, that's correct.

4 EXAMINER SEE: You can go ahead and
5 answer the question, Mr. Murray.

6 A. Well, there's at least two aspects of my
7 testimony that I believe would touch upon this,
8 first, again, as an overall recommendation I
9 recommend the Commission reject the stipulation. If
10 that happens, the merger would not be approved.

11 The second part of my testimony that
12 touches upon this is in my testimony at the top of
13 page 5, I request the Commission modify the
14 stipulation ESP and retain separate generation,
15 transmission, and distribution rates for Ohio Power
16 Company and Columbus Southern Power Company, and that
17 would obviously affect the last sentence of paragraph
18 3 in the stipulation.

19 MR. RANDAZZO: Mr. Murray, paragraph 3 on
20 page 24?

21 THE WITNESS: That's correct.

22 Q. So to be more specific, are you saying
23 that IEU opposes the consolidation of generation and
24 transmission rates for AEP Ohio? This the context of
25 the stipulation?

1 A. AEP Ohio doesn't exist.

2 Q. Okay. Well, I said the consolidation of
3 rates for AEP Ohio which is commonly referred to as
4 the collective reference for Ohio Power and Columbus
5 Southern Power. We can rephrase the question if you
6 want to do that.

7 Mr. Murray, are you saying that in the
8 context of evaluating the stipulation IEU opposes the
9 consolidation of transmission and generation rates
10 for Columbus Southern Power and Ohio Power?

11 MR. RANDAZZO: I object. Now we're going
12 to go through individual provisions of the settlement
13 when the settlement is presented as a package.
14 Mr. Murray has already testified that he is
15 recommending rejection of the package, the
16 consequence of that affects the merger recommendation
17 that's in the settlement. I object.

18 MR. NOURSE: Your Honor, I'm just
19 following up to his last statement about page 5 of
20 his testimony to clarify what he said about the last
21 sentence in paragraph 3.a.

22 EXAMINER SEE: And the objection is
23 overruled.

24 THE WITNESS: Could I have the question
25 reread?

1 (Record read.)

2 A. The answer would be yes.

3 Q. Okay. And the other area that, one of
4 the other cases, set of cases, resolved by the
5 stipulation is on the same page here, 24 of the stip,
6 the ECS cases. And in the context of the stipulation
7 does IEU oppose the stipulation's recommendation to
8 resolve Case Nos. 10-343 and 344?

9 A. Again, my overall recommendation is that
10 the Commission reject the stipulation. I have
11 offered up as an alternative some specific
12 modifications to the stipulation and my recollection
13 is I don't believe I proposed modifying this aspect
14 of the settlement.

15 Q. Okay. Fair enough.

16 Let me ask you to turn to page 4 of your
17 testimony. At the bottom half of the page you're
18 making a revenue comparison between the application
19 in this case and the stipulation; is that correct?

20 A. Yes.

21 Q. And I believe in line 17 you're -- well,
22 line 17, that figure as well as the figure in line
23 19, you're saying, are you not, that there's a
24 difference of less than 10 million in 2012 revenue
25 under the stipulation as compared to the application?

1 A. Yes.

2 Q. Now, is the purpose of this discussion to
3 suggest that AEP did not -- well, that the
4 stipulation does not reflect substantial compromise
5 by AEP from its application proposal?

6 A. What the settlement -- what the sentence
7 indicates is if you simply do the math, you'll see
8 that there's very little difference in the revenue
9 that's produced under the stipulation versus what was
10 characterized by the company as revenue under their
11 application.

12 I would add, though, that I think what
13 the sentence also allows you to conclude is that the
14 original application had a number of placeholder
15 riders that weren't quantified and probably weren't
16 reflected in terms of what the company indicated as a
17 revenue impact.

18 Q. Okay, Mr. Murray. Do you have your
19 workpapers with you?

20 A. Yes.

21 MR. NOURSE: I'd like to mark as AEP
22 Exhibit 14 a workpaper.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. I'll give you that sheet and you may be
25 able to match it up with your own copy.

1 Mr. Murray, does this look to be a copy
2 of one of your workpapers?

3 A. Yes.

4 Q. Okay. And this is the workpaper that you
5 used to calculate the 9.6 million that appears at the
6 bottom of page 4 --

7 A. Yes.

8 Q. -- of your testimony. Okay. And can you
9 walk us through the math that was done? You
10 mentioned doing the math in your last answer.

11 A. Yes. There is a kilowatt-hour figure
12 shown of 43,503,500,009, and that is multiplied by
13 8.8 cents per kilowatt-hour to generate a revenue of
14 1,707,494,974. Similar calculations in the same
15 kilowatt-hour figures in an average cost per
16 kilowatt-hour of 8.93 cents was used to generate the
17 number of 1,717,109,247. The difference between
18 those two numbers is the \$9,614,274 that's shown in
19 my testimony.

20 Q. Okay. And when you say used the
21 43 billion usage to multiply -- provide the 8.88
22 cents to get 1.7 billion, could you be more specific
23 about the math you did to arrive at that?

24 A. I don't understand your question.

25 Q. Did you multiply the 43 billion by 8.8

1 and then divide by a thousand?

2 A. I'd have to look at my actual workpapers.

3 Q. Do you have -- I'm sorry.

4 A. I believe that's -- because the values
5 shown there are in cents per kilowatt-hour --

6 Q. Right.

7 A. -- I believe that's what you'd have to
8 do.

9 Q. Do you have a calculator in your box?

10 A. Yeah, I'm not sure it goes out that many
11 digits.

12 Q. We've got a jumbo calculator over here if
13 you need to use it.

14 A. Sure. This calculator's got me stumped,
15 so I'll try mine.

16 Q. Okay.

17 MR. RANDAZZO: Well, could the record
18 reflect what it is that Mr. Murray is supposed to be
19 calculating?

20 MR. NOURSE: I want him to check the
21 numbers on this workpaper as he's explained the math.

22 A. I have my actual workpaper here
23 electronically so I'd like to bring that up if that's
24 okay.

25 EXAMINER SEE: That would answer the

1 question posed to you?

2 THE WITNESS: Hopefully.

3 EXAMINER SEE: Okay.

4 MR. RANDAZZO: Your Honors, might I
5 suggest we take a break, we'll probably do one
6 anyway, and Mr. Murray can work on the answer to the
7 question during the break, or maybe take a short
8 break himself, but it might be a good use of time.

9 MR. NOURSE: We can certainly do that,
10 and just to make it clear, I'm asking Mr. Murray to
11 double-check the calculations that would -- that led
12 up to his \$9.6 million bottom line to determine
13 whether a mistake in the math was made. Thank you.

14 EXAMINER SEE: Thanks. With that we'll
15 take a five-minute break and reconvene at 11:31.

16 (Recess taken.)

17 EXAMINER SEE: Let's go back on the
18 record.

19 Q. (By Mr. Nourse) Mr. Murray, have you had
20 a chance to check the math on your workpaper in
21 Exhibit AEP 14?

22 A. Yes. And I thought I had a copy of the
23 workpaper, but it turns out I don't, but I've
24 replicated in an Excel spreadsheet the calculations
25 and it would appear I have an error in my original

1 workpaper.

2 I multiply the 43,503,500,009
3 kilowatt-hours times 8.8 cents per kilowatt-hour
4 produces a value of 386,000,311 -- 311,080 dollars.
5 When I multiply that same volume times cents per
6 kilowatt-hour of 8.93 cents per kilowatt-hour, it
7 produces a dollar value of \$388,499,650. The
8 difference between those two is 2,188,570.

9 EXAMINER SEE: I'm sorry, that was 507?

10 MR. NOURSE: 507.

11 EXAMINER SEE: 70?

12 THE WITNESS: Yes.

13 EXAMINER SEE: Thank you.

14 Q. Mr. Murray, do you still have your
15 calculator?

16 A. I have the Excel spreadsheet.

17 Q. Okay. Are you multiplying the 43.5
18 billion by 8.88 and then dividing by a hundred?

19 A. By a thousand. You're right. I should
20 have been dividing by a hundred.

21 Q. Right. So can you redo that with that
22 formula?

23 A. Okay. When I make that correction and
24 multiply it by 100, the 43,503,500,009 times 8.8
25 cents produces a value of \$3,863,110,801 multiplied

1 by 8.93 produces a value of 3,000,884,996 -- I'm
2 sorry, \$3,884,996,501. The difference is 21,885,700.

3 Q. Okay. I think that takes us back to page
4 of your testimony, and 9.6 million at the bottom of
5 page 4 really should be 21.8 million; is that
6 correct?

7 A. That appears to be the case.

8 Q. Okay. Now, the --

9 A. Obviously, the total revenue values that
10 are shown on lines 17 and 19 would also have to
11 change.

12 Q. Okay. Now let me ask you a couple more
13 questions about the 8.8 cents on your workpaper, back
14 on your workpaper here. The 8.88 cents that you
15 used, which is the stipulation, from stipulation
16 testimony of David Roush, Exhibit DMR-1, correct?

17 A. I believe so, but let me check.

18 The 8.88 cents per kilowatt-hour is shown
19 on the testimony of David Roush in support of the
20 stipulation and recommendation, Exhibit DMR-1, page 1
21 of 2, there's a line showing AEP Ohio total 2012
22 rates with proposed ESP, and again, I don't believe I
23 have a copy of his original testimony in support of
24 the application, but there was a similar exhibit and
25 that's where the 8.93 value came from. There was an

1 identical exhibit to his testimony in the original
2 application.

3 Q. Identical in form with different numbers.

4 A. Yes, obviously.

5 Q. Okay. So with respect to the one you're
6 looking at there from the stipulation, DMR-1, the
7 8.88 cents, that does include DIR revenue charges;
8 does it not?

9 A. That would be a better question directed
10 at David Roush.

11 Q. Well, you're saying you used that number
12 and you're looking at the schedule. So I'm asking
13 you if the number you used includes DIR in this
14 calculation.

15 A. I would have to go back and spend some
16 time looking at Mr. Roush's workpapers. I was simply
17 trying to compare and contrast this exhibit as it
18 appears in the testimony in support of the
19 stipulation versus the exhibit that was filed
20 originally with the application.

21 Q. Again, Mr. Murray, you're looking at
22 DMR-1 from the stipulation, supporting the
23 stipulation, correct?

24 A. That's where the 8.88-cent per
25 kilowatt-hour comes from.

1 Q. Okay. And the notes on the right-hand
2 side of the sheet that correspond to the 2012 rates
3 with the proposed ESP, do they indicate in the second
4 line that it reflects distribution investment
5 recovery rider at settlement maximum amount?

6 A. I see that now.

7 Q. So the Projected Distribution column on
8 the right-hand side of the chart, the 2.24 cents that
9 went into the 8.88 would reflect DIR revenue,
10 correct?

11 THE WITNESS: Could I have the question
12 reread?

13 (Record read.)

14 A. Subject to check to verify that that's
15 where Mr. Roush included the DIR revenue, that would
16 be my understanding.

17 Q. Okay. Have you done a calculation of
18 what 8.88 cents would be without the DIR included?

19 A. No.

20 Q. And, therefore, you've not done a
21 calculation of what the revenue difference would be
22 if that difference were accounted for, have you?

23 A. Well, the revenue difference associated
24 with rider DIR is readily identifiable from the
25 stipulation itself. Working from memory I can -- I

1 can look at the stipulation and refresh my memory.

2 Q. Okay.

3 A. On page 9 of the stipulation and
4 recommendation it specifies that "The DIR annual
5 revenue shall be capped at \$86 million in 2012,
6 \$104 million in 2013, \$124 million in 2014 and the
7 first five months of 2015." So for 2015 you'd have
8 to take 124 million and multiply by 5 divided by 12,
9 I think working from memory that's about \$52 million.

10 Q. That would add to the delta that you
11 presented between the application and the stipulation
12 revenue, then?

13 A. If you sum those four values, it would
14 identify or reflect the maximum DIR revenues that I
15 understand would be permitted under the stipulation.

16 Q. Now, with respect to the 8.93 cents in
17 your workpaper, that, again, was referring to the
18 application, correct?

19 A. Yes. As I've indicated, there was a
20 substantially similar form in Exhibit DMR-1 to the
21 original application.

22 Q. Okay. And do you know if the 8.93 cents
23 presentation in the application's DMR-1 included
24 incremental 2011 environmental revenue?

25 A. I don't recall. I'd have to go back and

1 review those.

2 Q. Does the stipulation Exhibit DMR-1 that
3 you have before you include the incremental 2011
4 environmental?

5 A. Can you be more specific about what
6 you're referring to as "incremental 2011
7 environmental"?

8 Q. Well --

9 A. Is there a particular provision in the
10 stipulation you can point to?

11 Q. No. I'm asking you about the application
12 right now. The 8.93 percent -- sorry, 8.93 cents
13 associated with the DMR-1 from the application.

14 A. Again, I don't have that with me and I
15 don't recall what was rolled into that number.

16 Q. Okay. And do you recall whether the 8.93
17 cents from the application DMR-1 would have included
18 revenue from any of the other proposed riders in the
19 application?

20 A. Again, I don't have that testimony with
21 me and I would have to refer to it to identify what's
22 in or not in.

23 Q. Wasn't one of your criticisms of the
24 application proposal that the other proposed riders
25 were not quantified at all in the company's filings?

1 A. That was a criticism.

2 Q. And so would it be your recollection that
3 DMR-1 did or did not reflect quantification of those
4 other riders?

5 A. My recollection is there may have been
6 some riders reflected in DMR-1 attached to
7 Mr. Roush's testimony for the original application,
8 but it certainly didn't reflect all riders because
9 there were some riders that hadn't been quantified by
10 the company.

11 Q. And the riders that had not been
12 quantified, would that include the facilities closure
13 cost rider, the NERC, N-E-R-C, compliance rider, the
14 carbon capture and sequestration rider, and/or the
15 rate stabilization rider?

16 A. My recollection is the, certainly the
17 first three riders you mentioned. My memory is
18 failing me on what the rate stabilization rider is or
19 was in the original application.

20 Q. Okay. Did you do -- this revenue
21 comparison you did on page 4 was for 2012, correct?

22 A. Yes.

23 Q. Did you do a similar calculation for any
24 of the other years in the ESP term?

25 A. No.

1 Q. Would you agree that there are many
2 compromises reflected in the stipulation that the
3 company made compared to the initial application?

4 A. No.

5 Q. So it's your position that the company's
6 proposal in the application was not compromised
7 relative to the outcome proposed in the stipulation?

8 MR. RANDAZZO: I object. Asked and
9 answered.

10 MR. NOURSE: I'm trying to clarify his
11 testimony.

12 MR. RANDAZZO: It's the same question.

13 EXAMINER SEE: The objection is
14 overruled.

15 THE WITNESS: Can I have the question
16 reread?

17 (Record read.)

18 A. What I've tried to indicate or illustrate
19 in my testimony page 4 is I think if you look at the
20 overall revenues the companies will receive under the
21 stipulation, at least with respect to the year 2012,
22 there's very little movement between what the
23 application and what the stipulation produces.

24 I think if you look at the relative
25 numbers, the original application had, I'm working

1 from memory here, I believe increases in year 1 and
2 year 2 and no increase in year 3. The stipulation
3 kind of flips that, provides for increases of a
4 lesser magnitude in the first year but basically
5 backloads increases in the later years.

6 So relatively speaking I don't think that
7 where things ended up reflect that much of a
8 compromise by the company, at least with respect to
9 financial outcomes.

10 Q. Mr. Murray, are IEU members better off
11 under the stipulation than they would have been under
12 the application?

13 MR. RANDAZZO: I object. It's
14 irrelevant. The focus here is the stipulation.

15 MR. NOURSE: His testimony compares it to
16 the application and he just stated he didn't think
17 there was sufficient compromise.

18 EXAMINER SEE: The objection is
19 overruled.

20 THE WITNESS: Could I have the question
21 reread?

22 (Record read.)

23 A. Again, this is my opinion, but if you
24 look at the effect over the term of the ESP, my
25 assessment would be they're worse off.

1 Q. Mr. Murray, let me direct your attention
2 to the section in the testimony which I believe is
3 pages 3 to 9 where you deal with the first prong of
4 the three-part test and we'll start on page 3. Are
5 you there?

6 A. Yes.

7 Q. Now, would you agree that your
8 understanding of the first prong of the test is that
9 the stipulation would be a product of knowledgeable,
10 capable parties?

11 A. That's my understanding.

12 Q. And yet in your testimony at lines 18
13 through 19 you add a phrase "...that set about to
14 produce a reasonable compromise of the contested
15 issues based on the facts and the law." Do you see
16 that?

17 A. Yes.

18 Q. Is that a standard part of the first
19 prong of the test?

20 A. I believe you could characterize it that
21 way. Serious bargaining, in my judgment, needs to
22 produce a result that is lawful, and if you simply
23 get a bunch of people to agree to a stipulation that
24 is as a package or as individual components is
25 unlawful, I don't believe it constitutes serious

1 bargaining.

2 Q. Okay. Well, again, my questions at this
3 time are focused on part one of the test, the first
4 prong. So the language you've added there that I
5 just read on lines 18 and 19, is that language that
6 the Commission has applied in any prior cases, to
7 your knowledge?

8 A. I have not done that analysis. This is
9 my testimony.

10 Q. So you made up those words to say what
11 you think the first prong should be; is that what
12 you're saying?

13 A. Again, as I've indicated in my testimony,
14 I think -- and clarified here on the stand, I think
15 serious bargaining needs to reflect an outcome that's
16 lawful.

17 Q. And is that what the rest of that
18 language, "that set about," et cetera, means, is that
19 it needs to be lawful?

20 A. No. I think I describe a broader range
21 of concerns in my testimony.

22 Q. Has the Commission ever applied the first
23 prong, to your knowledge, to judge the substantive
24 results of a stipulation like you've done here?

25 A. I don't know.

1 Q. Would you agree that each of the
2 signatory parties has a history of participation in
3 matters before the Commission and is represented by
4 experienced and competent counsel?

5 A. There are certainly some parties that I
6 would agree with that characterization. There are
7 other parties that I don't believe have a history of
8 participation at the Commission. A couple of
9 examples come to mind. City of Grove City, the City
10 of Hilliard, I don't recall other than this
11 proceeding them ever intervening in a Commission
12 proceeding.

13 We also have I believe the party Paulding
14 Wind Farm, some name close to that, they are
15 constructing several wind farms in Ohio, obviously
16 they would have had to have gone through Power Siting
17 Board proceedings to get the approval to construct
18 those facilities, but other than that my recollection
19 is this is probably one of the first cases I've seen
20 them involved with.

21 Q. Okay. And those two parties or three
22 parties you just mentioned are represented by the
23 Schottenstein and the Bricker law firms respectively;
24 is that correct?

25 A. I would have to check. I don't know. I

1 think Paulding is represented by Bricker.

2 Q. And would you consider those law firms
3 experienced and competent counsel?

4 A. You said "those law firms," and, again,
5 my recollection is Paulding is represented by
6 Bricker. So it's not clear to me what you're
7 referring to by "those law firms."

8 Q. You also mentioned the City of Hilliard
9 and Grove City I believe which are represented by the
10 Schottenstein law firm.

11 A. I don't recall who they're represented
12 by.

13 Q. Are you reaching a conclusion about the
14 counsel for those parties, then, or not?

15 A. Again, I don't recall who they're
16 represented by.

17 Q. But you mentioned them in response to my
18 question about having experienced and competent
19 counsel; did you not?

20 A. No. My response had nothing to do with
21 whether or not they had experienced or competent
22 counsel. I identified them as parties that, to my
23 knowledge, have never participated in a PUCO
24 proceeding other than the instant one.

25 Q. Well, my question did have that included

1 so you didn't answer that part of the question?

2 MR. KUTIK: Objection. Argumentative.

3 MR. RANDAZZO: Objection.

4 EXAMINER SEE: And what was your
5 objection based on, Mr. Randazzo?

6 MR. RANDAZZO: Argumentative.

7 EXAMINER SEE: Okay, you both said it at
8 the same time so I couldn't tell.

9 MR. NOURSE: We can move on, your Honor.

10 EXAMINER SEE: Thank you.

11 Q. (By Mr. Nourse) Now, you criticize, do
12 you not, that it's your belief that certain parties
13 didn't actually evaluate all of the stipulation
14 provisions and conclude under the MRO test that the
15 stipulation passed before they signed; is that
16 accurate?

17 A. Do you have a specific reference in my
18 testimony?

19 Q. Well, on pages 7 and 8 in this section
20 you do raise those issues. Without respect to
21 specific references I'm asking you is that your
22 criticism, that parties didn't fully understand all
23 the provisions or do a full-blown MRO test before
24 they signed the stipulation?

25 A. My understanding, and again this is based

1 upon responses to interrogatories, is that some
2 parties performed no analysis of the effect of the
3 ESP versus an MRO. They were relying upon analysis
4 of others that at the time may have not even been
5 performed. So if you have no knowledge of whether or
6 not the ESP is more favorable in the aggregate than
7 the MRO, I don't know how you would conclude the
8 stipulation produces an outcome that's lawful.

9 Q. So is it your position, then, that the
10 results of the MRO test are of paramount importance
11 and are more important than impacts on particular
12 customers that may be supporting the stipulation?

13 A. My understanding is that the Commission's
14 statutorily obligated to conclude an ESP is more
15 favorable in the aggregate than an MRO. Unless it
16 can make that finding it can't approve an ESP
17 irrespective of the impacts to each of the customers.

18 Q. Has IEU supported stipulations in SSO
19 cases such as FirstEnergy's 10-388 case?

20 A. IEU has supported stipulations in ESP
21 cases, I believe that case number you're referring to
22 is FirstEnergy's most recent case.

23 Q. Correct. So did IEU sponsor or present
24 an MRO test analysis in support of the stipulation in
25 that case?

1 A. I don't recall. My recollection is I
2 don't believe so.

3 Q. Is it your belief that the statutory MRO
4 test governs an individual party's decision to
5 support a stipulation?

6 A. Individual parties are free to agree to
7 whatever they want to agree to in a stipulation.
8 That doesn't change the end result of whether or not
9 the Commission must find the stipulation as lawful.

10 Q. And in order for the Commission to find
11 that the MRO test is passed, is it necessary for each
12 and every party to present evidence or do analysis
13 supporting that kind of finding?

14 A. I don't believe it's necessary for every
15 individual party to support evidence. There has to
16 be some evidence for the Commission to reach a
17 conclusion that the ESP is more favorable than the
18 MRO.

19 Q. What's your understanding of who bears
20 the burden of demonstrating the MRO test has been
21 satisfied?

22 A. My understanding is it's the -- the
23 burden of proof is on Ohio Power Company and Columbus
24 Southern Power Company.

25 Q. On page 4 of your testimony at lines 1

1 and 2 you state that the Appendix C -- let me make
2 sure I get the context that carries over from page 3.

3 You're saying versions of the stipulation
4 like Appendix C were not disclosed to all the parties
5 prior to the stipulation being filed, correct?

6 A. That's correct.

7 Q. And what's your specific basis for saying
8 Appendix C was not disclosed to all the parties?

9 A. My recollection of the chain of events is
10 that all parties were engaged in settlement
11 discussions up until roughly the last week in August.
12 There was some back-and-forth at that particular
13 point in time about whether or not to request the
14 Commission for an extension of testimony due dates.
15 A number of parties ended up requesting the
16 Commission to extend testimony due dates. There were
17 some parties, including IEU, that filed pleadings
18 indicating that they didn't think that that was
19 productive.

20 Thereafter, those parties were excluded
21 from what I understand were ongoing settlement
22 discussions with the other parties. On the evening,
23 I guess September 6th around 10 o'clock at night all
24 parties were provided a copy of what was represented
25 to be a near-final version of the stipulation; that

1 document did not contain Appendix C, at least that's
2 my recollection.

3 Parties where told they could offer
4 counterproposals through I think an 8 a.m. deadline
5 the next day. Parties then assembled that morning
6 and, again, my recollection is that parties that
7 indicated that they still had some opposition to the
8 stipulation were never shown Appendix C.

9 MR. NOURSE: Your Honor, objection.

10 A. The stipulation was filed later that day.

11 Q. Mr. Murray, I asked you a very narrow
12 question. We'll get back to your statements about
13 the negotiation in a little bit. I asked you what
14 the basis, specific basis, for your statement that
15 parties did not receive Appendix C prior to the
16 stipulation being filed.

17 MR. KUTIK: Objection. Asked and
18 answered.

19 MR. RANDAZZO: And he misquotes the
20 testimony. Mr. Murray said that all parties were not
21 given the information prior to the stipulation being
22 filed, and it's asked and answered.

23 MR. NOURSE: Okay. I first asked him
24 whether I stated his testimony correctly, I tried to
25 do so. Let me come at it a different way, your

1 Honor.

2 EXAMINER SEE: Okay.

3 Q. (By Mr. Nourse) Mr. Murray, are you
4 saying that IEU did not get a copy of Appendix C
5 prior to the stipulation being filed?

6 A. IEU was certainly one of the parties that
7 were excluded from a meeting that took place on the
8 morning of September 7th or was very briefly allowed
9 in the room and then asked to leave.

10 Q. Okay. That's not what I'm asking you,
11 Mr. Murray. First of all, I want to direct your
12 answers to your own personal knowledge. I'm asking
13 you about your statements about the circulation of
14 Appendix C, and is it your understanding that IEU did
15 not receive a copy of Appendix C prior to the filing
16 of the stipulation?

17 A. I certainly didn't see one and I was
18 involved in the negotiations.

19 Q. And do you have any personal knowledge
20 about whether other parties received a copy of
21 Appendix C prior to the filing of the stipulation?

22 MR. RANDAZZO: Could I have the question
23 read back?

24 (Record read.)

25 MR. RANDAZZO: Thank you.

1 A. Again, I'm aware that there were some
2 parties that were asked to leave the meeting on the
3 morning of September 6th. I do not know whether or
4 not they did receive a copy of Appendix C.

5 MR. RANDAZZO: Mr. Murray, you said the
6 morning of the 6th. Did you mean the 7th?

7 THE WITNESS: That's correct.

8 Q. Okay, Mr. Murray, you seem to want to
9 talk about the negotiation process so let's do that.
10 You stated earlier that you were at multiple meetings
11 representing IEU in the settlement process of this
12 case, correct?

13 A. I've participated in multiple settlement
14 meetings on behalf of IEU. IEU was represented by
15 counsel, so my participation was in the context of
16 providing analytical support.

17 Q. And did you not appear and directly
18 participate in the settlement discussions leading up
19 to the stipulation?

20 A. I previously testified I attended some
21 settlement meetings. I don't recall if I attended
22 all of them and, again, I think after late-August
23 there were certain meetings to which IEU was not
24 invited.

25 Q. But you did appear and make statements

1 and represent IEU directly, not necessarily all
2 through counsel, correct?

3 A. Again, your term "represent" to me has a
4 connotation of representing as a legal
5 representation. I certainly participated in
6 settlement meetings on behalf of IEU and was actively
7 involved in the negotiations.

8 Q. And were you present at a meeting on
9 August 26th that started at 2 p.m. Friday afternoon?

10 A. Again, I don't recall specific dates and
11 times. I attended a number of settlement meetings.

12 Q. Were you present at a meeting where the
13 company asked parties to indicate whether the
14 then-current framework of settlement was acceptable
15 for proceeding forward?

16 A. I can recall being at a meeting where a
17 discussion similar to that took place. I don't
18 recall the exact date or time.

19 Q. And do you recall the nature of IEU's
20 response to that question?

21 A. Yes. I think IEU has consistently
22 conveyed the view that the framework of the
23 settlement produces a result that's unlawful.

24 Q. And is it also accurate that IEU stated
25 that the framework did not provide a basis for moving

1 forward with further discussions on that basis?

2 MR. KUTIK: May I have the question read,
3 please?

4 (Record read.)

5 MR. RANDAZZO: Okay. I'm going to -- I
6 need to say something on the record here.

7 EXAMINER SEE: We haven't gone off the
8 record.

9 MR. RANDAZZO: Yeah. Just so the record
10 is clear, I'm comfortable with these questions. But
11 counsel is opening the door to having discussions
12 about what went on in the settlement discussions at
13 the point in time where a local newspaper is seeking
14 to discover that. So is counsel waiving any
15 objection to the disclosure of this information?

16 MR. NOURSE: No, your Honor, and I'm
17 carefully avoiding and none of my questions go to the
18 substance of any compromise offer or the contents of
19 any term sheet or stipulation and they relate
20 directly to the process and the issues being
21 discussed in testimony in this case.

22 MR. RANDAZZO: You have discussed the
23 settlement, what went on in settlement
24 negotiations --

25 EXAMINER SEE: Mr. Randazzo, the Bench is

1 aware that there are some issues outstanding
2 regarding the content of settlement negotiations.
3 It's wise for all counsel to be aware of the fact
4 that the public records request is out there and to
5 tread very carefully. With that --

6 MR. KUTIK: Well, your Honor, the reason
7 I asked for the question to be reread is that I do
8 believe that this particular question gets into the
9 substance of the settlement discussions and the
10 specific position that was taken by a party in the
11 context of settlement discussions. So I would object
12 to the question on the grounds that it gets into
13 settlement discussions which has previously been
14 ruled as out of bound by the Bench.

15 MR. RANDAZZO: Yeah, and, your Honors, if
16 I might, in the interest of the concerns that you
17 referenced I would move to strike all questions that
18 have been asked about the settlement and IEU's
19 position, and if that motion is not granted, I intend
20 to go into this on redirect. I think counsel has
21 opened the door and any claim now that this stuff is
22 private and confidential has been waived.

23 MR. NOURSE: Your Honor, I totally
24 disagree. And certainly I can only speak to
25 AEP Ohio's position which has been that the substance

1 of draft term sheets and settlement offers as well as
2 draft stipulations that reflect compromise offers are
3 confidential and not everything that relates to
4 settlement is confidential.

5 Certainly the first prong of the test is
6 the testimony here that's being addressed and the
7 Commission has used that and the Supreme Court of
8 Ohio has used that in measuring partial stipulations
9 and so it's certainly not correct that anything
10 relating to the settlement is confidential. And I
11 think that belies the positions that have been taken
12 previously in this proceeding.

13 As to Mr. Randazzo's request to strike
14 all questions, I'm not sure what that means. So I
15 certainly would want to get a better understanding of
16 that before responding.

17 EXAMINER SEE: Okay.

18 MR. KUTIK: Counsel takes the remarkable
19 position that it's only AEP's position or those folks
20 on AEP's side of this dispute that is subject to
21 protection by claiming that term sheets that were
22 distributed by AEP are protected.

23 The substantive positions of every party,
24 if AEP's position is entitled to protection, the
25 substantive position of every party during those

1 discussions is subject to the same protection.

2 MR. NOURSE: No, I didn't disagree with
3 that statement, Mr. Kutik. I said I can only speak
4 for AEP Ohio.

5 But, your Honor, I think if you look at
6 the transcript here, you'll see very clearly I was
7 asking Mr. Murray some very narrow questions about
8 the distribution of Appendix C.

9 MR. RANDAZZO: No.

10 MR. NOURSE: And he launched off into a
11 whole speech about being excluded from negotiations
12 on two occasions and I was not going there unless he
13 did. And he certainly did.

14 MR. KUTIK: The question specifically
15 asked --

16 EXAMINER SEE: Thank you, gentlemen.
17 Have a seat.

18 MR. NOURSE: And, your Honor, if I can
19 just offer --

20 EXAMINER SEE: No, Mr. Nourse, no.

21 MR. NOURSE: I've got a solution, but
22 that's all right.

23 EXAMINER SEE: Hold on.

24 Do you still wish to propose a solution,
25 Mr. Nourse?

1 MR. NOURSE: Certainly, your Honor. If
2 the two answers that Mr. Murray gave that referenced
3 the negotiation and being excluded are stricken from
4 the record, I'll be happy to move on without an
5 answer to the current question, because I wasn't
6 going to raise this unless he did, and he did.

7 MR. RANDAZZO: Your Honors, may I?

8 EXAMINER SEE: You want to respond to
9 that proposed solution?

10 MR. RANDAZZO: Yes. I don't think it's a
11 solution, your Honor. It's an effort to try and
12 extract counsel from a problem that he's created.

13 At page 4 Mr. Nourse was asking
14 Mr. Murray about his statement that Appendix C was
15 not disclosed to all parties prior to the stipulation
16 being filed. Mr. Murray has explained why that
17 statement is true in response to questions from
18 Mr. Nourse.

19 Mr. Nourse has now gone into specific
20 questions about positions that IEU expressed
21 regarding settlement proposals and specifically the
22 settlement framework prior to there being a
23 stipulation being filed at the Commission. That is
24 inappropriate. But, now that he's opened the door
25 it's in the public and to the extent that people are

1 advocating in favor of not disclosing these kinds of
2 things and have motions pending at the Commission,
3 they're now going both ways on the subject.

4 This door is open, we intend to pursue it
5 on redirect.

6 MR. NOURSE: Your Honor, you know, for
7 Mr. Randazzo to state my questions are inappropriate,
8 I certainly disagree with that. None of my questions
9 have been seeking information about the content of
10 any settlement offer made by any party in the
11 negotiations.

12 I asked a narrow question about why he
13 thought Appendix C was not circulated, and he's the
14 one that raised this whole issue. If you look at his
15 answers, and arguably they could have been stricken
16 as nonresponsive, frankly, but he kept -- he raised
17 that on two occasions and I'm not the one that opened
18 that door.

19 EXAMINER SEE: We're off the record.

20 (Recess taken.)

21 EXAMINER SEE: Let's go back on the
22 record. Prior to the objections being raised by IEU
23 and FES the question posed by Mr. Nourse was "And is
24 it also accurate that IEU stated that the framework
25 did not provide a basis for moving forward with

1 further discussions on this basis?"

2 After reviewing the transcript the Bench
3 does not believe that that puts into the public
4 record any substantive information about the
5 negotiations and I'm going to direct Mr. Murray to
6 answer just that question and, Mr. Nourse, move on.

7 THE WITNESS: Can I have the question
8 reread?

9 (Record read.)

10 A. My recollection is that's certainly a
11 position that IEU conveyed at some point in the
12 settlement negotiations.

13 Q. Thank you, Mr. Murray.

14 So I believe we were talking about the
15 MRO test and your views about the importance of the
16 MRO test in the context of supporting or opposing a
17 stipulation, so let me get back to that briefly.

18 Would IEU reject a stipulation that
19 benefited its members if there was a dispute about
20 the MRO test results?

21 A. I don't know. Again, as I've previously
22 testified, the decision to support or oppose the
23 stipulation is one made by the members based upon the
24 facts and specific circumstances they confront at the
25 time. So your hypothetical situation doesn't really

1 have a context.

2 Q. That's a general question. So let me ask
3 you, before you were stating I believe, and correct
4 me if I don't state this correctly, I believe you
5 stated that the MRO test results could create a
6 situation where a stipulation would be unlawful and I
7 believe, to use your term, and that would cause it to
8 fail the first prong of the three-part test. Is that
9 your testimony?

10 A. Yes.

11 Q. Okay. Let me shift to the second prong
12 which I believe you cover in the bulk of your
13 testimony, I'll say, from pages 9 through 49,
14 correct?

15 A. I believe beginning on page 9 of my
16 testimony I begin to talk about whether the
17 stipulation violates any important regulatory
18 principle or practice.

19 Q. And that discussion carries clear through
20 to page 49, correct?

21 A. Yes.

22 Q. Okay. The first area I want to cover in
23 that section relates to what I believe you're
24 referring to in your testimony as a second transition
25 period that starts on page 10 and goes for several

1 pages to maybe the top of 15. Does that sound about
2 right?

3 A. Yes.

4 Q. Okay. And is it your position that
5 Senate Bill 3 created a transition period and that
6 your opinion is that the stipulation improperly
7 creates a second transition period?

8 A. Yes.

9 Q. So in making that argument you're
10 stating, are you not, that the stipulation's
11 so-called second transition period is similar to
12 Senate Bill 3's transition period?

13 A. No. I think, as I discuss in my
14 testimony, there are quite a few significant
15 differences between the transition period created by
16 SB 3 and how it balanced the relative interests of
17 customers and the utility versus what's reflected in
18 the stipulation.

19 Q. So the difference being that you believe
20 Senate Bill 3's transition period is balanced and the
21 stipulation so-called transition period is not
22 balanced. Is that accurate?

23 A. Again, I discuss in my testimony there
24 was fairly significant differences between the
25 transition period and the characterizations or the

1 requirements of those transition periods under SB 3
2 and what would be produced by the stipulation.

3 Q. Okay. But since your testimony harkens
4 back to the Senate Bill 3 transition period, I'm
5 trying to understand why you're applying the Senate
6 Bill 3 transition period again to the current
7 transition in the stipulation. Can you explain that
8 to me?

9 A. Well, if you want to -- if you accept the
10 premise that a transition period is appropriate,
11 which I do not, and you compare it and contrast the
12 transition period and results that would result from
13 a stipulation to what was required under SB 3, there
14 are fairly dramatic differences.

15 SB 3 required rates to be unbundled but
16 capped at the levels that were in effect prior to the
17 enactment of SB 3. Fuel rates were rolled into base
18 rates. Rates for residential customers were reduced
19 by 5 percent. So customers started out from a
20 position where they were no worse off than what had
21 been in place prior to SB 3.

22 Customers were then given the opportunity
23 to get a better outcome by going to the market for
24 power. That's fundamentally different than what's
25 reflected in the stipulation. The stipulation would

1 immediately raise rates, it would provide for
2 pass-through of cost changes associated with the fuel
3 adjustment clause, so the rate increases reflected in
4 the stipulation may ultimately be higher.

5 We've got a number of placeholder riders
6 that could further increase rates and we've got the
7 provisions in the stipulation that are designed to
8 economically ration shopping. By the company's own
9 admission there will not be any shopping above the
10 caps that are associated with the RPM price of
11 capacity that's set aside in the stipulation.

12 Q. Okay. Well, let's start with your last
13 statement there, Mr. Murray. You say that by the
14 company's admission that there will not be shopping
15 above the RPM set-aside levels. Did I hear you
16 correctly?

17 A. Yes.

18 Q. Okay. And what exactly is the basis for
19 your statement that the companies admitted what you
20 said?

21 A. If you could bear with me a minute, I
22 have a document I need to refer to.

23 Okay, on September 7th, 2011, which is
24 the date the stipulation was filed, shortly after the
25 stipulation was filed AEP hosted a conference call

1 with investment analysts. I have a copy of the
2 transcript from that call. And during that call
3 there is a series of questions and answers, there was
4 a question from Dan Eggers with Credit Suisse and he
5 was questioning, I'll read here, "How would shopping
6 competitively work if the headroom kind of vanished
7 out of that customer class going forward? Is it
8 realistic that you'll get to the kind of the 20
9 percent, 30 percent, or 40 percent shopping given
10 where your new rates would be versus where the market
11 is?"

12 Richard Munczinski, who's a vice
13 president with AEP, responded to the question and his
14 response is: "Yeah, it is, Dan. Again, it's Rich.
15 What happens is those customers that get the
16 discount, as Brian mentioned, is priced out at the
17 RPM prices. So the \$100, the \$16 and I think the \$26
18 going forward. Over those percentages, if you want
19 to shop, you pay the full cost of the \$255 per
20 megawatt-day. So, the thought and the theory is that
21 the shopping will be constrained to the discounted
22 RPM price."

23 Q. Okay. So Mr. Munczinski stated that the
24 thought and the theory was that there may not be
25 shopping above the RPM prices; is that what you're

1 basing your statement on?

2 A. I read Mr. Munczinski's response. I
3 believe what he is indicating is the stipulation by
4 design will restrict shopping to no more than the
5 caps.

6 Q. Well, I want to explore that, Mr. Murray.
7 When you say "by design," that's the part that I fail
8 to see the connection to the quote you just read. Is
9 all you're saying that the companies may have
10 forecasted or predicted as an economic matter that
11 could be a result of the stipulation?

12 A. Again, Mr. Munczinski stated, "So, the
13 thought and the theory is that the shopping will be
14 constrained to the discounted RPM price." So I would
15 presume the company has modeled that as a financial
16 outcome, yes.

17 Q. Okay.

18 MR. NOURSE: Let me mark AEP Exhibit 15.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And this is a discovery question and
21 answer in this case about exactly the quote you just
22 made from the September 7th conference. Have you
23 reviewed this?

24 A. Yes.

25 Q. Can you read the response into the

1 record?

2 A. The response is "In a strict economic
3 sense, any increased price input for providing
4 service acts as a constraint on retail shopping,
5 albeit an appropriate cost-based constraint. While
6 shopping might increase if AEP Ohio provided free
7 capacity for use by CRES providers, that would be
8 inappropriate. The stipulated capacity rate of
9 \$255 per megawatt-day is reasonable and supported by
10 the filed testimony. See the testimony of Company
11 Witness Munczinski and Pearce."

12 Q. Okay. So this is the company's
13 explanation of the constraint comment that you read
14 from the transcript; is that your understanding?

15 A. I think this is the company's attempt to
16 rehabilitate the statements that Mr. Munczinski's
17 publicly made about what the intended effect of the
18 stipulation is.

19 Q. Okay, Mr. Murray. Now, I believe as part
20 of your prior answer -- well, first of all, before we
21 move on, so is it your understanding that no CRES
22 provider would make an offer to support retail
23 shopping at the \$255 per megawatt-day rate of
24 capacity?

25 A. I can't speak to what any individual CRES

1 provider would or would not do. That, ultimately, is
2 a business decision that they have to make. What
3 I've testified at is the company has identified
4 intent in the stipulation is to restrict shopping to
5 no more than the caps that are in the stipulation.

6 Q. Well, we've already explored your basis
7 for attributing intent in the stipulation. What I'm
8 asking you is your opinion, sir. And are you saying
9 that you don't have any knowledge or basis to
10 conclude whether a CRES provider would make an offer
11 supporting retail competition at \$255 per
12 megawatt-day?

13 A. I think you could look at the numbers
14 that are reflected in the testimony of Laura Thomas
15 that illustrate what relative prices are for
16 capacity, you can compare that to what people have
17 estimated is prevailing market prices with and
18 without that capacity and I think you can very
19 quickly conclude that it would be uneconomic for a
20 CRES provider to try to make an offer at \$255 a day
21 capacity.

22 That's not to say that some, you know,
23 there are CRES providers that engage in a business
24 strategy that isn't always predicated on how much
25 money you make. Companies may make a decision that

1 says I'm going to get the market and I'm going to be
2 a loss leader to get market share.

3 Q. Well, Mr. Murray, aren't the conclusions
4 about future shopping based on a number of
5 assumptions that one might make to reach that
6 conclusion?

7 A. Again, the conclusions are based upon
8 what you might assume is reasonable in terms of the
9 projections of the market prices under the term of
10 the ESP.

11 Q. And would you agree that a capacity
12 charge that might be paid by a CRES provider is one
13 of many factors that would influence whether or not
14 offers are made and shopping occurs?

15 A. It is a factor that they will have to
16 recognize in their business decisions.

17 Q. And is it your understanding that CRES
18 providers could also blend rates over the ESP term
19 and effectively make an offer based on a capacity
20 charge that's lower than 255 per megawatt-day?

21 MR. KUTIK: Objection. Lack of
22 foundation. Assumes facts that certainly aren't in
23 evidence and certainly aren't part of the
24 stipulation.

25 MR. NOURSE: It's not assuming evidence.

1 I'm asking him a conceptual based on the same line
2 we've been talking about, a conceptual question.

3 MR. KUTIK: Well, he's asking a
4 hypothetical that wouldn't happen under the
5 stipulation.

6 EXAMINER SEE: The objection is
7 overruled.

8 THE WITNESS: Can I have the question
9 reread?

10 (Record read.)

11 A. My understanding is that the pricing of
12 capacity is subject to the caps in the stipulation.
13 Once we get to a level where the caps are met or
14 exceeded, then all capacity from that point forward
15 to a CRES provider would be priced at \$255 a
16 megawatt-day for the term of the stipulation. So I'm
17 not, you know, I don't follow your question in
18 that --

19 Q. Okay.

20 A. -- there doesn't seem to be any
21 mathematical opportunity to blend 255 with another
22 number.

23 Q. Let me ask it this way, if the 2012 RPM
24 set-aside has already been exceeded so that the
25 21 percent that applies in 2012 would not be

1 available, would CRES providers still be able to make
2 an offer based on a three-year contract that would
3 get in on the 2013 and '14 RPM set-aside and would
4 pay 255 for the period of 2012? That's what I meant
5 by "blending." Do you understand that?

6 A. Not exactly. Could I have the question
7 reread?

8 Q. That's okay. Let's move on.

9 So these were sidetracks based on your
10 comments when I asked you a question about the
11 transition period in Senate Bill 3. Let's get back
12 to that, Mr. Murray. I want to get into some detail
13 about Senate Bill 3's transition period.

14 First of all, when you talk about Senate
15 Bill 3's transition period, are you talking about
16 the --

17 MR. RANDAZZO: If we're switching -- I'm
18 sorry to interrupt, Steve. If we're switching gears,
19 Mr. Murray's been on the stand for three hours and 15
20 minutes, more or less, based upon a 90-minute
21 estimate of cross. I'd like to inquire how much more
22 time there is. We, based upon the estimated cross,
23 we made commitments for other meetings which I'll
24 need to cancel this afternoon, but that's our
25 problem, not yours. But if there's going to be a

1 lunch break or not a lunch break, it would be helpful
2 to us for purposes of doing what we need to do for
3 the balance of the day.

4 MR. NOURSE: Yes, we should definitely
5 take a lunch break, your Honor. This is not going as
6 quickly as I had hoped it would go.

7 EXAMINER SEE: Okay. If you are about to
8 switch subjects, then we're going to take a short
9 lunch. Reconvene at 2.

10 Let's go off the record.

11 (Thereupon, at 1:12 p.m., a lunch recess
12 was taken.)

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1 Thursday Afternoon Session,
2 October 20, 2011.

3 - - -

4 EXAMINER SEE: Let's go back on the
5 record. Continuing with the cross-examination of
6 Mr. Murray.

7 Mr. Nourse.

8 MR. NOURSE: Thank you, your Honor.

9 - - -

10 KEVIN M. MURRAY

11 being previously duly sworn, as prescribed by law,
12 was examined and testified further as follows:

13 CROSS-EXAMINATION (Continued)

14 By Mr. Nourse:

15 Q. Mr. Murray, we were discussing Senate
16 Bill 3 and the transition plan, I believe, at the
17 break. And I can't remember if I asked you this
18 question right before we broke or not, when you refer
19 to the transition period of Senate Bill 3, are you
20 talking about the five-year market development
21 period?

22 A. Senate Bill 3 had a market development
23 period of five years, it also had a provision that
24 provided for the collection of any regulatory
25 transition charges, could be longer than five years,

1 but had to conclude within ten years. So, you know,
2 in terms of the transition period I think you can
3 appropriately characterize SB 3 as containing up to a
4 ten-year transition period.

5 Q. And the transition revenues I think you
6 referred to there, that related to, among other
7 things, recovery of stranded generation investment;
8 is that --

9 A. SB 3 identified that was one element that
10 could be addressed in transition plans.

11 Q. Okay. And in determining what investment
12 was stranded, what's your understanding of the issue
13 or the determination that had to be made in order to
14 conclude that generation investment was stranded?

15 A. The transition plans filed by all of the
16 utilities did a -- included a forward projection of
17 likely market prices, and the stranded cost claims
18 were based in large measures on an assessment of
19 whether or not if we went immediately to generation
20 prices that reflected prevailing market prices,
21 whether or not the utilities would be allowed to
22 collect their full generation cost as reflected in
23 their book value of assets at that time as well as
24 any regulatory assets that were on their books.

25 So that conceptually is the framework

1 provided for under SB 3. In practice, all -- my
2 recollection is all of the transition plans submitted
3 by utilities ultimately produced stipulations which,
4 in the context of the stipulation, resolved the
5 transition cost charges.

6 Q. Okay. But the basis of saying the
7 generation investment was stranded was a comparison
8 of book value to the then-current market and
9 projections of market prices? That's accurate?

10 A. Yes.

11 Q. And you agree that market rates change
12 over time as do forward projections of market rates.

13 A. They can.

14 Q. They can and they do; is that accurate?

15 A. Yes.

16 Q. And so would the forward projection of
17 market rates at that time, under Senate Bill 3, have
18 included, among other things, the then-current view
19 of environmental regulations?

20 A. I don't recall that level of detail and
21 what was reflected in the witness testimony.

22 Q. Would it make sense to you that that
23 would have to be part of the analysis?

24 THE WITNESS: Could I have the original
25 question reread?

1 (Record read.)

2 A. Yeah, my recollection of some of the
3 econometric modeling done by witnesses to project
4 market prices is it either implicitly or explicitly
5 reflects assumptions about pending environmental
6 regulations.

7 Q. And, in fact, is it fair to say that the
8 review, the issue at that time, was the known costs
9 including book value versus the projected market
10 price and a comparison of whether the costs were
11 above market?

12 A. It's not clear to me. Your question
13 refers to "the issue." What issue were you referring
14 to?

15 Q. We're still talking about stranded
16 investment determinations under Senate Bill 3.

17 A. Yes. The stranded investment
18 determination was based upon estimates of prevailing
19 market prices.

20 Q. Now, is it your position currently in
21 this case, relative to the stipulation, that any
22 price for capacity that's above the RPM price is
23 inappropriate for recovery by AEP Ohio?

24 A. Yes.

25 Q. And when you talk about market prices in

1 your testimony, you're really referring to RPM
2 auction clearing prices.

3 A. Do you have a specific reference in my
4 testimony?

5 Q. I did. Let me see if I can find it. We
6 can come back to that, perhaps.

7 Now, would you agree that the -- let me
8 back up.

9 At the end of the transition period under
10 Senate Bill 3 would you agree that the utilities were
11 to be charging market-based price starting in 2006?

12 MR. RANDAZZO: Could I have the question
13 read back, please?

14 (Record read.)

15 A. As I've previously responded, I believe
16 SB 3 would make a reference to a transition period.
17 In SB 3, it was a five-year market development
18 period. There was a longer period of time of up to
19 ten years that allowed for recovery of regulatory
20 transition costs. My recollection of SB 3 as
21 originally enacted was that it called for rates to be
22 market based at the end of the market development
23 period.

24 Q. Okay. So your qualification about the up
25 to ten-year period for recovery of stranded

1 investment would simply mean that if the Commission
2 allowed stranded investment for ten years and part of
3 that was still left in 2006, that part that was left
4 would be added to the market-based price, is that
5 what you're saying?

6 A. Yes, that's one aspect of it. My
7 recollection is that there were also circumstances in
8 which the market development period could have been
9 less than five years. At least under some of the
10 stipulations that were ultimately reached in the
11 transition plan cases.

12 Q. Okay. And, in fact, were the utilities
13 permitted to charge market-based rates beginning in
14 2006?

15 A. Actually, what was then Cincinnati Gas &
16 Electric went to market-based rates for its
17 commercial and industrial customers in I believe
18 2004.

19 Q. Okay. Well, let's stick with AEP Ohio,
20 Columbus Southern, and Ohio Power. Was AEP Ohio
21 permitted to charge a market-based SSO rate starting
22 in 2006?

23 A. Starting in -- or, beginning in 2006
24 AEP's rates were established pursuant to what were
25 called rate stabilization plans. The rate

1 stabilization plans were largely a negotiated result,
2 so it's difficult to characterize the resultant rates
3 as either cost based or market rates, they were rates
4 that were agreed to by parties that supported
5 stipulations.

6 Q. Is it your understanding that AEP Ohio's
7 rate stabilization plan rates were above or below
8 market rates?

9 A. If I could follow up on my immediately
10 prior response, again, I don't know that it's
11 possible to characterized the rate stabilization plan
12 rates as either cost based or market based. My
13 recollection is AEP has historically characterized
14 them as market based.

15 Q. Okay.

16 A. Could I have the other question read?

17 Q. Sure.

18 (Record read.)

19 A. I think at the time stipulations were
20 reached in those cases there was --

21 THE WITNESS: Could I have the question
22 reread again?

23 (Record read.)

24 A. Again, the answer to that question
25 probably varies depending on which party you would

1 ask. My opinion is AEP's initial rate stabilization
2 plan rates were, again, at the time of the
3 stipulation projected to be lower than market,
4 market-based price projections at that time.

5 Q. Thank you. Now, was the rate
6 stabilization plans that were implemented, were they
7 a second transition, in your view?

8 A. The rate stabilization plans, I think,
9 are an outcome that resulted from a general
10 realization that the development of competitive
11 markets hadn't materialized in both scope and pace
12 that was expected at the time SB 3 was enacted. So
13 you could certainly characterize the rate
14 stabilization plans as providing a further
15 transition.

16 Q. Now, the rate stabilization plans were
17 implemented during the time which Senate Bill 3 was
18 still in effect, correct, and prior to the enactment
19 of Senate Bill 221?

20 A. Yes.

21 Q. Okay. And is it accurate to say that the
22 market-based price, SSO pricing standard in Senate
23 Bill 3 was replaced with the ESP and MRO options
24 enacted as part of Senate Bill 221?

25 THE WITNESS: Could I have the question

1 reread?

2 (Record read.)

3 A. Again, SB 3 originally contemplated that
4 there would be market-based rates in 2006 or sooner
5 in some cases. The rate stabilization plans I think,
6 again, produced a negotiated outcome. Ultimately
7 SB 221 was passed and that governed rates in effect
8 on and after the intention was January 1, 2009.

9 Q. And my question was whether Senate Bill
10 3's SSO pricing that I think we've agreed was
11 market-based pricing was replaced through the
12 enactment of Senate Bill 221 with the ESP option and
13 the MRO option. Do you agree with that?

14 A. Again, SB 221 superseded some of the
15 pricing provisions provided for by SB 3.

16 Q. Including the market-based pricing
17 mechanism?

18 MR. RANDAZZO: May I inquire, are we
19 talking about for standard service offer?

20 MR. NOURSE: That's what I believe I
21 stated, yes.

22 A. Again, SB 3 contemplated market-based
23 rates on and after 2006 or sooner in some cases.
24 SB 221 provides for prices established either
25 pursuant to an electric security plan or a market

1 rate option. In my judgment both an electric
2 security plan and a market rate option reflect
3 market-based prices.

4 Q. Okay. So you would characterize an ESP
5 rate plan as market-based pricing?

6 A. Yes.

7 Q. Would you agree that the ESP statute
8 includes several cost-based rate adjustments?

9 A. There are elements of an ESP that can
10 reflect a pass-through of costs, but ultimately the
11 test of the ESPs -- whether or not the ESP rates can
12 be approved is a comparison to market rates. And ESP
13 rates themselves have been characterized as
14 market-based rates in all of the electric security
15 plans that I'm aware of.

16 Q. Characterized by whom?

17 A. At least some of the parties.

18 Q. Okay. And would you agree that even the
19 market rate option during the price blending period
20 contains explicit cost-based rate adjustments for the
21 nonmarket portion?

22 A. For an MRO for a utility that is subject
23 to blending, which is a utility that owned generation
24 assets as of a date certain, the competitive bid
25 price is required to be blended with the legacy ESP

1 rate. Now, the legacy ESP rate, as I've indicated,
2 is a market-based rate, but in an ESP there are
3 pricing provisions such as a fuel clause that are
4 permitted that are developed relative to a measure of
5 the utility's costs.

6 Q. And my current question relates to an MRO
7 and the nonmarket portion of the price blend, and
8 would you agree that the legacy SSO rate is adjusted
9 based on the cost of fuel, number one, environmental
10 costs, number two, and renewable costs, number three?

11 MR. RANDAZZO: Did you say is or may be
12 adjusted?

13 MR. NOURSE: Is adjusted under the
14 nonmarket portion of the blend.

15 A. My recollection is it's adjusted for
16 fuel. As to the other two elements, I'd have to look
17 at the statute to refresh my memory.

18 Q. Okay, what's your understanding of the
19 minimum period for transition, and let's stick to
20 AEP Ohio for now with these questions, the minimum
21 transition period to full market rates under an MRO?

22 A. The minimum period is five years, but
23 there is a provision in the law that, my
24 understanding, the Commission has interpreted as
25 allowing it to revisit the blending after the second

1 year. That question was explicitly one of the issues
2 in a market rate proposal filed by Duke Energy-Ohio
3 late last year, and the Commission ultimately
4 determined, again, an initial MRO application is
5 required and is constrained to have a minimum
6 blending period of five years.

7 Q. Was it -- just to clarify that, and I'm
8 certainly not asking for any legal conclusions in
9 this discussion, but was it five years or was it
10 effectively six years?

11 MR. RANDAZZO: I object to the form of
12 the question. Are you talking about the application
13 or what the Commission can do in response to the
14 application?

15 MR. NOURSE: Yeah.

16 Q. And I'm not talking about the Duke case
17 and I'm not asking you for a legal opinion, I'm just
18 asking for your understanding of the MRO statute and
19 I believe there's a requirement for 50 percent, no
20 more than 50 percent in the fifth year, and my
21 question is to get to 100 percent isn't the minimum
22 really six years?

23 A. Yes. If you were to assume that the
24 blending is not modified by the Commission such that
25 MRO steps through the blending for the first five

1 years, you wouldn't be at 100 percent market until
2 the start of the sixth year.

3 Q. Mr. Murray, would you agree that for AEP
4 to terminate or modify its generation pool and to
5 achieve structural separation those are significant
6 changes to the AEP current business model?

7 A. Not necessarily.

8 Q. So those, in your view, would be
9 characterized as minor changes to the AEP business
10 model?

11 MR. RANDAZZO: Can we -- you said "AEP
12 business model."

13 MR. NOURSE: AEP Ohio.

14 A. Can you clarify what you mean by the "AEP
15 business model"?

16 Q. Well, currently there's not structural
17 separation within AEP Ohio; is that correct?

18 A. That's my understanding.

19 Q. And currently AEP Ohio participates in a
20 generation pool with other AEP operating companies in
21 the east; is that correct?

22 THE WITNESS: Can I have the question
23 reread?

24 (Record read.)

25 A. I believe the answer is Columbus Southern

1 Power Company and Ohio Power Company participate with
2 the other operating companies. AEP Ohio is an entity
3 that doesn't exist, but with that clarification, yes,
4 that's my understanding.

5 Q. And we talked about this before,
6 Mr. Murray. When I refer to AEP Ohio, I am referring
7 collectively to Columbus Southern Power and Ohio
8 Power, okay?

9 A. Again, just to avoid confusion I may make
10 my answer very clear.

11 Q. Okay. On page 14 of your testimony you
12 make a statement beginning on line 5 and ending on
13 line 8, and I'm paraphrasing, that the second
14 transition period that you talk about has no basis in
15 law. Do you see that?

16 A. Yes.

17 Q. Okay. And I don't see any qualifications
18 here, but is it fair to say that to the extent you're
19 making legal assertions in your testimony, those are
20 really based on the advice of counsel?

21 A. That's correct.

22 Q. Now, so with respect to your
23 understanding of that statement that you make, does
24 this mean that the beginning point of the current
25 plan or the end point provided for in the stipulation

1 is unlawful?

2 MR. KUTIK: May I have the question read,
3 please?

4 (Record read.)

5 A. The additional transition that I'm
6 referring to is, in part, a function of the capacity
7 pricing mechanism and the fact that there are caps on
8 the amount of capacity that are available to RPM
9 pricing. And capacity above that level is available
10 at 255 a megawatt-day which, in my judgment, provided
11 the company with additional transition revenues to
12 insulate its generating assets from revealing market
13 prices. That provision exists both, certainly exists
14 at the beginning of the period of the ESP. I need to
15 refresh my memory on the stipulation here.

16 So the capacity pricing set-asides
17 continued through the first half of 2015 or May of
18 2015, actually, so thereafter capacity is going to be
19 priced based upon the RPM price.

20 Q. So are you saying in this statement we
21 referenced on page 14 that any capacity price above
22 RPM is unlawful?

23 A. My understanding is there's no basis for
24 it in the law.

25 Q. Okay. That understanding is based on the

1 advice of counsel?

2 A. Yes.

3 Q. Okay. On page 13 of your testimony you
4 reference testimony of Staff Witness Jodi J. Bair
5 with a quote in the middle of the page there on page
6 13. Do you see that?

7 A. Yes.

8 Q. Okay. Was it your understanding of the
9 testimony you were quoting that that testimony was
10 addressing capacity charges?

11 A. I don't have a copy of her testimony in
12 front of me to refresh my memory, but my recollection
13 is I think her testimony was broader than simply
14 referring to capacity pricing, it was referring to
15 the intention of SB 3 to move utilities entirely to
16 market after the end of the transition period.

17 Q. So when you say it was broader than, did
18 it address capacity charges at all?

19 A. When you said "it," are you referring to
20 her testimony?

21 Q. Yes.

22 A. Again, I'm working from recollection. I
23 think my recollection of her testimony was broader.
24 I don't recall if she explicitly addressed capacity
25 pricing or not in her testimony.

1 Q. Turn to page 17, you have a question and
2 answer at the top of the page about how in your
3 opinion the stipulation blocks shopping. Do you see
4 that?

5 A. Yes, I do.

6 Q. Okay. Now, do you agree that the
7 stipulation does not literally impose shopping caps?

8 A. Agree. I think I've recognized in my
9 written testimony as well as the discussions we had
10 earlier today that the caps are based upon economic
11 considerations as opposed to an absolute cap on
12 shopping.

13 Q. Do you know whether the imposition of
14 limits on shopping is permitted under Senate Bill
15 221?

16 A. I don't have a copy of the statute with
17 me. My recollection is there is a provision that
18 gives the Commission some discretion relative to how
19 quickly shopping may occur. You've got to I think
20 read that in context with other provisions of the
21 SB 221. For example, SB 221 explicitly requires the
22 Commission to encourage large-scale governmental
23 aggregation, so that obviously would suggest that the
24 Commission is supposed to be encouraging shopping as
25 much as possible.

1 Q. So would you agree that the ESP statute
2 does permit the Commission to impose shopping limits
3 if it wants to?

4 MR. RANDAZZO: I object. Asked and
5 answered.

6 MR. NOURSE: No, your Honor, I don't
7 think he answered that question.

8 EXAMINER SEE: The objection is
9 overruled.

10 A. Again, I don't have a copy of the statute
11 here in front of me. Again, my recollection is
12 there's a provision that provides the Commission some
13 discretion relative to how quickly shopping may
14 occur.

15 Q. Okay. So would you agree that a
16 projection of no additional shopping at \$255 per
17 megawatt-day is not the same as imposing a shopping
18 cap?

19 THE WITNESS: Could I have the question
20 reread?

21 (Record read.)

22 A. I think that illuminates form over
23 substance, the company has identified the intent of
24 the capacity pricing provision is to cap shopping at
25 the limits of the stipulation.

1 Q. Well, Mr. Murray, we're not going to go
2 back through that, your characterization of intention
3 of the stipulation again. What I'm asking you is --

4 MR. RANDAZZO: I object to the statement.
5 It wasn't his characterization. He was testifying as
6 to what the company characterized.

7 MR. NOURSE: Yeah, and we went through
8 that and it wasn't anything about anybody's intent.
9 So we'll let the record stand on that.

10 Q. What I'm asking you is whether a
11 projection of something happening, in other words
12 shopping over \$255 per megawatt-day, is the same as
13 imposing a shopping cap?

14 MR. KUTIK: Objection. Asked and
15 answered.

16 EXAMINER SEE: Overruled.

17 THE WITNESS: Can I have the question
18 reread, please?

19 (Record read.)

20 A. Your question doesn't make any sense to
21 me because you're talking about shopping over \$255 a
22 megawatt-day. The caps that are in the stipulation
23 are percentage caps on the amount of shopping.

24 Q. Let me ask you this, Mr. Murray, if we
25 were to assume that the stipulation is adopted and

1 the applicable price for capacity for shopping above
2 and beyond the RPM set-asides in the stipulation will
3 be \$255 per megawatt-day -- are you with me so far?

4 A. Yes.

5 Q. -- and sitting here today can you tell me
6 whether there will be shopping at \$255 per
7 megawatt-day or not?

8 A. Again, I've testified earlier I can't
9 predict what CRES suppliers may make available in the
10 way of offers. I'd indicated that in my judgment a
11 CRES provider couldn't economically make an offer at
12 \$255 a megawatt-day, but we've seen in years past
13 CRES providers adopt business strategies that weren't
14 necessarily based upon all transactions being
15 profitable. In some cases CRES providers are willing
16 to be what I would characterize as a loss leader to
17 get entry into the market.

18 Q. Okay. Well, that's not what I'm asking
19 you about. My question -- I don't want you to assume
20 anything about loss leaders. I'm asking you about a
21 profit making competitive opportunity. Is it true
22 that any projection that there will not be shopping
23 based on a capacity charge of \$255 a megawatt-day is
24 based on a number of assumptions that cannot
25 currently be known?

1 A. All assumptions are assumptions, so yes,
2 they're projections, not a given.

3 Q. So you can't say as you sit here today
4 that there will be no shopping where \$255 per
5 megawatt-day is the applicable capacity charge for
6 shopping, can you?

7 A. In my judgment you will not see shopping
8 above the caps.

9 Q. And that's based on your current
10 assumption of energy prices and other things?

11 A. Yes.

12 Q. Okay. And those assumptions could turn
13 out to be wrong, correct?

14 A. Yes.

15 Q. Is there a level above RPM price charged
16 for capacity that does not cap shopping, in your
17 opinion? In other words, a level between \$255 per
18 megawatt-day and the applicable RPM auction clearing
19 prices.

20 A. I haven't attempted to do that analysis.

21 Q. Have AEP Ohio's customers been blocked
22 from shopping during the past ten years when
23 regulated rates were lower than market offers?

24 A. What do you mean by "blocked from
25 shopping"?

1 Q. I'm trying to use the same concept that
2 you use on page 17 about blocking shopping.

3 THE WITNESS: Can I have the question
4 reread?

5 (Record read.)

6 A. They have not been blocked from shopping,
7 but, again, as we previously discussed, the presence
8 of things like a regulatory transition charge could
9 act as an economic hurdle that may or may not allow
10 certain customers to -- be economical for them to
11 switch.

12 Q. Okay, Mr. Murray, can you turn to page
13 18. In question and answer 16, the top half of the
14 page -- do you see that?

15 A. Yes.

16 Q. -- are you saying there that IEU would
17 prefer cost-based regulated rates to market rates
18 going into the future?

19 THE WITNESS: Could you reread the
20 question, please?

21 (Record read.)

22 A. No. What I'm testifying here is that the
23 prevailing market prices in June 2014 through
24 May 2015 reflect higher prices than in the preceding
25 years. And in my judgment those prices reflect some

1 degree of expectations about the impact of U.S. EPA
2 regulations.

3 Q. Well, is it IEU's position going into the
4 future that IEU members would prefer to be regulated
5 based on cost-based regulated rates versus
6 market-based rates?

7 MR. RANDAZZO: I object. IEU members are
8 not regulated, number one. Number two, once we clean
9 that problem up could you define what you mean by
10 "cost-based regulation"?

11 MR. NOURSE: Well, I don't think I said
12 anything about IEU members being regulated. I'm
13 asking whether IEU members going into the future
14 would prefer to be served generation rates that are
15 cost based or market based.

16 EXAMINER SEE: The objection is overruled
17 with the clarification that was made.

18 A. Your question doesn't make a whole lot of
19 sense to me because, as I have testified, in my
20 judgment rates under either an ESP or MRO are market
21 based. So when you ask whether or not IEU members
22 would prefer cost-based rates, you are talking about
23 something that's not contemplated currently under the
24 law and you would have to define what that is.

25 Q. So you don't know what I mean by

1 "cost-based rates"?

2 A. Cost-based rates can have a number of
3 definitions. In Ohio the definition of cost-based
4 rates has changed over time. If you go back
5 historically, prior to my time, my understanding is
6 we used to have cost-based rates based upon a concept
7 called reproduction costs new. The most recent
8 vintage of cost-based rates as it existed prior to
9 the enactment of SB 3 was what I would call net
10 depreciated plant plus expenses equal your revenue
11 requirement.

12 The Federal Energy Regulatory Commission
13 has several of its own variations of what it deems as
14 appropriate cost-based rates. So there has to be
15 some specificity about what you mean when you refer
16 to cost-based rates for there to be any context to
17 the question.

18 Q. Well, Mr. Murray, you can certainly
19 specify any flavor of cost-based rates that you are
20 endorsing in your answer, but let me ask you a
21 different question. Do IEU members prefer, going
22 into the future, for generation rates to be served
23 under an ESP or an MRO?

24 A. That's not a decision that IEU members
25 get to make. The Commission -- electric utilities

1 have the option about whether or not to file an ESP
2 or an MRO, and my understanding is that's an election
3 by the electric distribution utility, the Commission
4 can't compel them to do one or the other. For the
5 Commission to approve an ESP there has to be a
6 demonstration that it's more favorable than an MRO.

7 You know, for an MRO there are other
8 statutory tests that the Commission has to perform
9 and conclude the MRO satisfies before it can approve
10 it. So, you know, the reference to cost-based rates
11 here is not making a whole lot of sense to me.

12 Q. Well, Mr. Murray, if you got to advise
13 the company on which option to pick, what would your
14 advice be?

15 MR. RANDAZZO: I object. Mr. Murray's
16 already indicated three times now that you need more
17 specificity around the comparison Mr. Nourse thinks
18 can be made on the back of an envelope before you can
19 draw any conclusions about one or the other. I
20 object.

21 EXAMINER SEE: Did you want to respond,
22 Mr. Nourse?

23 MR. NOURSE: I don't think the question's
24 been answered. He's reciting his understanding of
25 the law and the statute, and I'm asking a simple

1 question as to whether he's endorsing that AEP Ohio
2 go to a market rate offer.

3 EXAMINER SEE: The objection is
4 overruled.

5 THE WITNESS: Could I have the question
6 reread?

7 (Record read.)

8 A. I couldn't advise the company one way or
9 the other without more specificity about what you
10 mean by "cost-based rates." I will tell you, based
11 upon my experience, I think the company would pick
12 whichever outcome produced, in its judgment, the
13 highest level of revenues.

14 Q. Okay, Mr. Murray, let's talk about the
15 MRO test. You've got a section in your testimony
16 from pages 25 to 49 that discuss different aspects of
17 the MRO test; is that correct?

18 A. Yes.

19 Q. And is it fair to say your basic
20 conclusion there -- let me back up.

21 One of your components of your MRO test
22 is to develop a competitive benchmark price, correct?

23 A. Do you have a specific reference in my
24 testimony?

25 Q. No.

1 A. Yes, to do an MRO comparison you have to
2 come up with an estimated market price.

3 Q. And is it fair to say your basic position
4 on the competitive market price is that it's not
5 necessary to create an administrative price because
6 the Commission should look to the results from the
7 FirstEnergy auctions that you discuss in your
8 testimony?

9 A. There's no reason to use administratively
10 developed estimates when we have readily observable
11 actual market transactions.

12 Q. Okay. And that statement presumes, does
13 it not, that the auction clearing prices from the
14 FirstEnergy auctions are comparable to what would
15 apply for AEP Ohio?

16 A. They're actual market results for the
17 purposes of performing the analysis. I used those
18 results to do the analysis. I've provided other
19 examples in my testimony to support the view that
20 those auction prices are representative of the
21 prevailing market prices.

22 Q. Okay. I didn't want to go through all
23 your arguments. I'm just asking you whether your
24 position is based on the FirstEnergy auction price
25 results being comparable to what would apply for

1 AEP Ohio.

2 A. Yes.

3 Q. Okay. So if the auction results are not
4 comparable, then the competitive benchmark price
5 based on those auction results would be
6 inappropriate; do you agree?

7 MR. RANDAZZO: Objection. Mr. Murray
8 said that he -- the testimony he just gave indicates
9 that he relied upon the FirstEnergy auction and other
10 things. I object to the form of the question.

11 MR. NOURSE: I think that's -- well, I
12 think he should be able to answer the question
13 without assistance from counsel.

14 EXAMINER SEE: Okay. Mr. Murray can
15 answer the question. The objection is overruled.

16 THE WITNESS: Can I have the question
17 reread?

18 (Record read.)

19 A. If the auction results are not
20 comparable, you would get a different mathematical
21 result. I've illustrated, based upon the FirstEnergy
22 auction price, my estimate in the MRO versus ESP
23 comparison. We've had three other witnesses at this
24 point in time do their own analysis all based upon a
25 set of assumptions and all three witnesses now

1 conclude based, upon the Commission's remand order
2 that on a quantitative basis the ESP is not more
3 favorable than the MRO.

4 So I don't know how anybody concludes
5 under any set of assumptions the ESP is more
6 favorable than the MRO.

7 Q. Mr. Murray, you do yourself find it
8 necessary to create a price for the '15-'16 period;
9 is that correct?

10 A. Yes.

11 Q. And that's because the FirstEnergy
12 auctions don't cover that period; is that true?

13 A. Yes, that's correct.

14 Q. Okay. So in that instance there's no
15 comparable auction clearing price and that's why you
16 deem it necessary, correct?

17 A. There's no FirstEnergy comparable auction
18 clearing price. I believe if you look at what I did
19 in my testimony, I used the price from a prior year
20 to be conservative.

21 Q. Okay. Now, is it your position that only
22 the price test component of the MRO test is
23 applicable?

24 A. No. As I've previously stated, my
25 understanding of the Commission's statutory

1 obligation is it's required to evaluate the ESP and
2 all of its terms and conditions and reach a
3 conclusion that it's more favorable in the aggregate
4 than an MRO.

5 Q. My question to you is whether only the
6 price test component is applicable.

7 A. Again, I think there's other factors the
8 Commission is required to examine, I've identified a
9 number of them in my testimony, and I think when you
10 examine the impact of those other factors, it
11 actually makes the ESP worse.

12 Q. Okay. So is it fair, then, to say that
13 you agree the MRO test does include both quantitative
14 and qualitative considerations?

15 A. Again, I've conveyed my understanding of
16 the analysis of the Commission to undertake. It's
17 the ESP in the aggregate has to be more favorable
18 than the MRO.

19 Q. And does that include qualitative as well
20 as quantitative considerations?

21 A. It may.

22 Q. To your understanding has the Commission
23 in the past considered qualitative as well as
24 quantitative aspects in the ESP?

25 A. That's my understanding.

1 Q. Okay. Now, let me ask you to turn to
2 KMM-2, Exhibit 2. And this is the "Competitive Bid
3 Auction Schedule Approved in Case 10-388."

4 A. Yes.

5 Q. And that's the FirstEnergy --
6 FirstEnergy's recent SSO case.

7 A. Yes.

8 Q. And would you agree that the auction
9 delivery periods covered in these auctions reflect
10 different auction times and dates as compared to the
11 stipulation's contemplated auctions?

12 A. It's not clear to me what you're
13 referring to when you say the "stipulation's
14 contemplated auctions." There's a provision in the
15 stipulation that calls for a competitive bid process
16 in later years in the ESP. If there's an auction
17 requirement, you'll have to point me to it.

18 Q. Okay. Well, are you making a distinction
19 between a competitive bid process and an auction?

20 A. I'm saying there can be differences.
21 What I was trying to point out is, you know, I don't
22 believe that there's any requirement in the
23 stipulation for a competitive bid in the initial
24 years of the ESP.

25 Q. Correct. Up through mid-2015 is what you

1 mean by "the earlier years"?

2 A. Yes.

3 Q. Okay. I'd like to go through some of the
4 components of your competitive benchmark price
5 comparison and discuss, in these questions I'd like
6 to discuss potential differences between FirstEnergy
7 auction results and what would apply to AEP Ohio,
8 okay? You understand that?

9 A. I'm waiting for the question.

10 Q. I asked you if you understood what I
11 wanted to talk about.

12 A. I may or may not depending on what the
13 question is.

14 Q. Do you have various components for your
15 competitive benchmark analysis including the simple
16 swap component?

17 A. I don't have a simple swap component in
18 my benchmark comparison.

19 Q. Would you agree that the auction clearing
20 price for the FirstEnergy auction would reflect a
21 simple swap component?

22 A. No.

23 Q. Why not?

24 A. The FirstEnergy auctions were auctions
25 for a full requirement product that includes all

1 capacity, energy, and from working from memory here,
2 I've got a document I can refresh myself if need be,
3 transmission losses, distribution losses. So it was
4 an all-in type of product intended to reflect all of
5 the generation services necessary to provide or -- to
6 provide the standard service offer.

7 So there's no explicit, you know, bidders
8 indicated a price at which they were willing to
9 provide all of those products and services. Whether
10 or not there was something akin to a simple swap
11 reflected in the bid prices that they ultimately were
12 willing to offer is a question only a bidder could
13 answer.

14 Q. You did state that the auction clearing
15 prices would include as an all-in product capacity,
16 energy, losses, correct?

17 A. Correct.

18 Q. Okay. So in including the energy
19 component wouldn't there be a forward energy price
20 that would be part of the auction clearing price?

21 A. Not necessarily.

22 Q. Okay. Your answer is the same for
23 capacity?

24 A. In the FirstEnergy auctions, because
25 FirstEnergy is in -- had to elect a fixed resource

1 requirement alternative to deal with the fact that
2 they were out of sync with the RPM timing,
3 FirstEnergy conducted a separate auction in order to
4 secure capacity that FirstEnergy would point to and
5 identify to PJM in order to satisfy its obligations
6 as a load-serving entity under a fixed resource
7 requirement plan.

8 The bidders were instructed that they
9 would receive a capacity price in accordance with the
10 results of that auction for the first two years,
11 first two delivery years, and in the third delivery
12 year the capacity would be provided pursuant to the
13 prevailing RPM process.

14 So bidders have the capacity identified
15 to them as a known dollar amount that they may or may
16 not ultimately reflect in their bid price.

17 Q. You say they may not reflect it in their
18 bid price?

19 A. Again, it's a descending clock auction.
20 So ultimately, at the end of the day, the bidders
21 have to decide if they're willing to offer an all-in
22 product at whatever the then-clearing auction price
23 is.

24 Q. Okay. Would you agree on those special
25 FirstEnergy auctions that were done they were not

1 cleared three years in advance like the base residual
2 auction?

3 THE WITNESS: I got more siren than
4 question, so if you could reread it for me.

5 Q. I'll ask it again, Mr. Murray. You
6 referred to the special FirstEnergy auctions to
7 integrate into RPM, correct?

8 A. You said referred to, are you --

9 Q. In your answer.

10 A. Do you have a specific reference to my
11 testimony?

12 Q. In your answer that you just gave.

13 A. Yeah, those auctions were conducted out
14 of sync. They weren't done three years in advance.

15 Q. Okay. Now, is it your understanding that
16 the FE auction price applies to loss adjusted
17 megawatt-hours?

18 A. I have with me a document that I
19 downloaded from FirstEnergy's website that's titled
20 "Master Standard Service Offer Supply Agreement
21 Between The Cleveland Electric Illuminating Company,
22 The Toledo Edison Company, Ohio Edison Company and
23 Each SSO Supplier Set Forth on Appendix A hereto."
24 This was posted along with other documents that
25 governed how the auctions were going to take place.

1 There are a number of definitions in the document
2 itself that I'll read through here that specifically
3 identify what bidders were bidding on.

4 SSO load means the full electricity
5 requirements for SSO Service of SSO customers.

6 SSO Service means Standard Service Offer
7 service that is not provided by a CRES Supplier and
8 excludes the load of customers served via a
9 Percentage of Income Payment Plan.

10 SSO Supplier Responsibility Share means,
11 for each SSO Supplier, the fixed percentage share of
12 the SSO Load for which the SSO Supplier is
13 responsible as set forth in Appendix A...stated
14 percentage is determined by dividing the number of
15 tranches won by the SSO Supplier in the
16 solicitation --

17 MR. RANDAZZO: Mr. Murray, take your
18 time.

19 A. -- by the total number of tranches.

20 SSO Supply means unbundled Energy,
21 Capacity, and Ancillary Services, including, to the
22 extent not expressly assumed by the Companies
23 pursuant to Section 2.3...all transmission and
24 distribution losses and congestion and imbalance
25 costs associated with provision of such said services

1 as measured and reported to PJM, and such other
2 services or products that an SSO Supplier may be
3 required to provide, by PJM or other Governmental
4 Authority, in order to meet the requirements of SSO
5 Service.

6 Standard Service Offer means a
7 market-based standard service offer of all
8 competitive retail electric services necessary to
9 maintain essential electric service to Customers,
10 including unbundled Energy, Capacity, Ancillary
11 Services and Firm Transmission Service, including all
12 transmission and distribution losses, congestion and
13 imbalance costs associated with the provision of the
14 foregoing services, other obligations or
15 responsibilities currently imposed or that may be
16 imposed by PJM, and such other services or products
17 that are provided by a CRES Supplier or an SSO
18 Supplier to fulfill its obligations to serve customer
19 load, as required by Section 4928.141 of the Ohio
20 Revised Code.

21 MR. NOURSE: Your Honor.

22 A. That's my understanding.

23 Q. Now that you've read that all into the
24 record, Mr. Murray, I'm going to ask you the same
25 question again, maybe that all refreshed your

1 recollection.

2 Is it your understanding that the
3 FirstEnergy auction price applies to lost adjusted
4 megawatt hours?

5 A. Yes. This definition indicated it
6 includes all transmission and distribution losses.

7 Q. Okay. And is it your understanding that
8 the analysis of Company Witness Thomas supporting her
9 competitive benchmark price, that the losses are
10 built into the -- that they're applied to metered
11 kWh?

12 A. Do you have a specific reference to her
13 testimony I can look at?

14 Q. No, I'm just asking you your
15 understanding.

16 A. Again, if you can point to something
17 specific in her testimony, I'd be happy to look at
18 it.

19 Q. So you don't recall -- you don't have an
20 understanding of that?

21 A. She did an administratively estimated
22 market price. I think I have a replication of one of
23 her exhibits, let me look.

24 In her testimony in support of the
25 stipulation Ms. Thomas includes Exhibit LJT-1, there

1 are three pages, it shows a rollup or
2 administratively estimated market price, it's built
3 up using ten elements and one of those elements is
4 losses.

5 Q. Okay, Mr. Murray, can you turn to page
6 34. You make a statement in lines 3 through 6 about
7 the FirstEnergy auction, I believe, saying that
8 bidders were required to rely on capacity secured in
9 the two integration auctions. Do you see that?

10 A. Yes.

11 Q. And in the context of a CBP for an
12 auction supporting SSO load, do bidders normally rely
13 on the base residual auction clearing prices?

14 THE WITNESS: Can I have the question
15 reread?

16 (Record read.)

17 A. That would I think depend on the
18 particulars of the competitive bid process.

19 Q. Okay. On page 35 of your testimony on
20 line 12 you make a reference there to prevailing
21 market prices. Do you see that?

22 A. Yes.

23 Q. And in your mind is that just another way
24 to say RPM prices?

25 A. No. But we're going into areas that are

1 confidential.

2 Q. That's not confidential, sir. I'm asking
3 you what you meant by that phrase.

4 A. You asked me what I -- could I have the
5 question --

6 Q. It's line 12.

7 THE WITNESS: Could I have the question
8 reread, please?

9 EXAMINER TAUBER: Yes.

10 (Record read.)

11 A. And my answer is no. RPM prices is one
12 indication of prevailing market prices. There are
13 others that I have relied upon for the purposes of my
14 testimony. Those other prices are confidential.

15 Q. And I didn't ask you to talk about that
16 so we don't need to.

17 You start on page 36, I believe, talking
18 about what I'll refer to as the RAA. You understand
19 what I mean?

20 A. If your reference to RAA is the
21 reliability assurance agreement, yes.

22 Q. Okay. Is it your understanding that the
23 RAA is a FERC-approved tariff applicable to wholesale
24 capacity charges?

25 A. Yes.

1 Q. And under the state compensation
2 mechanism provision in the RAA is it your
3 understanding that that provision permits retail
4 charges?

5 A. No.

6 Q. It does not permit retail charges?

7 A. The state compensation mechanism that's
8 referred to in this provision refers to the capacity
9 prices that a competitive retail electric supplier
10 may pay AEP in instances where a CRES supplier
11 acquires load and AEP is operating under a fixed
12 resource requirement plan.

13 When CRES suppliers are obtaining and
14 paying AEP for capacity, my understanding is that's a
15 wholesale transaction. The state pricing mechanism,
16 as it's identified here in the tariff, allows in
17 certain circumstances for the State Commission to
18 identify what that price will be, but it is, in my
19 understanding, a wholesale transaction.

20 Q. So you're saying the RAA allows a State
21 Commission like the PUCO to establish a wholesale
22 charge?

23 A. It provides that the pricing for
24 wholesale transaction may, under certain
25 circumstances, be established by a state commission.

1 Q. And that pricing applies to a -- is a
2 wholesale charge, is it not?

3 A. That's my understanding.

4 Q. Okay. On page 40 -- I'm sorry, question
5 and answer 40 which is page 37, I believe. Do you
6 see that?

7 A. Yes.

8 Q. Are you asserting that an FRR entity
9 who's opted out of the RPM market would be stuck with
10 RPM prices for its capacity under a CBP auction?

11 THE WITNESS: Can you reread the
12 question, please?

13 (Record read.)

14 A. You would -- again, there's a reference
15 to a competitive bid process in your question without
16 defining what that competitive bid process is, so I
17 can't respond to your question. I'm incapable of
18 responding.

19 Q. Well, Mr. Murray, can you read question
20 40 aloud, please?

21 A. "How would capacity be priced if a
22 competitive bid was conducted while the Companies are
23 an FRR entity?"

24 Q. And that's the context of my question. I
25 referred you to question and answer 40.

1 A. Your questions, maybe it could be reread,
2 I believe your question said if the company opted out
3 of its FRR status.

4 Q. No. My question is that are you -- I'm
5 asking you in this answer 40 if you are asserting
6 that an FRR entity who has opted out of the RPM
7 market would be required to accept RPM prices for its
8 capacity under a competitive bidding auction.

9 THE WITNESS: Could I have the question
10 reread?

11 (Record read.)

12 A. An FRR entity that has opted out of its
13 FRR status would be subject to RPM, which is the
14 prevailing mechanism for pricing capacity in PJM if
15 you're not an FRR entity. What's reflected in the
16 competitive bid would be a function of what products
17 and services bidders are asked to supply in that
18 competitive bid.

19 Q. I didn't ask you about an FRR entity that
20 opted out of its FRR status.

21 MR. RANDAZZO: I object. That's exactly
22 what he asked.

23 MR. NOURSE: No, it's not, I said --

24 MR. RANDAZZO: Can I have the question
25 read back?

1 EXAMINER TAUBER: Mr. Randazzo, please
2 wait a minute.

3 Mr. Nourse.

4 MR. NOURSE: That's not what I said and
5 I'm happy to read it back and I'm happy to break it
6 down and go through this one step at a time.

7 EXAMINER TAUBER: Let's do that.

8 MR. NOURSE: Okay.

9 Q. (By Mr. Nourse) Mr. Murray, is it your
10 understanding that an FRR entity has opted out of the
11 RPM-pricing market?

12 A. A load-serving entity that elects a fixed
13 resource requirement alternative is not subject to
14 capacity priced through the RPM auction mechanism.

15 Q. Okay. And in answer 40 on page 37 are
16 you asserting that an FRR entity would be required to
17 accept RPM prices for capacity under a competitive
18 bidding process?

19 A. What I'm attempting to identify in the
20 question and answer to 40 is that AEP is an FRR
21 entity, at least as things stand today. The FRR
22 entity is the entity that bears, in PJM's tariff, the
23 responsibility for satisfying capacity obligations.

24 We have seen, and the FirstEnergy
25 transition auctions are a good example of how the

1 load-serving entity could transfer that capacity
2 obligation to others, effectively, by, for example,
3 saying rather than relying upon capacity that I own,
4 I'll solicit capacity through a competitive bid
5 process, you could negotiate bilateral contracts, but
6 you would in turn rely upon that capacity and that's
7 the capacity that the load-serving entity would point
8 to in terms of identifying its responsibilities for
9 PJM.

10 In AEP's case they are an FRR entity, so
11 if there is a competitive bid process, okay, AEP
12 ultimately still remains the entity that has to
13 satisfy the capacity obligation to PJM. The
14 Commission could, in my judgment, tell AEP "We're
15 going to require you to solicit capacity like
16 FirstEnergy did in its auction and rather than
17 pointing to your own owned generating units
18 substitute those in your FRR plan."

19 What I'm also attempting to identify, and
20 this goes further on in my testimony on pages 38 and
21 39 --

22 Q. Well, Mr. Murray, I'm asking you about
23 one --

24 MR. KUTIK: Can he finish his answer,
25 please?

1 EXAMINER TAUBER: Please allow the
2 witness to finish.

3 A. -- that if you were to conduct a
4 competitive bidding process, in my judgment
5 competitive bidders would not be willing to pay more
6 than prevailing market price for capacity in order to
7 submit the lowest bid.

8 Q. Are you finished?

9 A. Yes.

10 Q. Okay. Now, did I understand you to say
11 that, first of all, with a competitive bidding
12 process like we're talking about, this is in the
13 context of an SSO competitive bidding process,
14 correct, for nonshopping load?

15 A. Yes.

16 Q. And are you saying the RAA applies or
17 does not apply to that context?

18 A. What part of the RAA? The RAA is a
19 fairly broad document.

20 Q. Okay. The part that you quote in your
21 testimony on page 36, section D.8.

22 A. What I've attempted to identify in this
23 section of my testimony is that if we were to do a
24 competitive bid process, the state compensation
25 mechanism that's specified in Section D.8 of the PJM

1 reliability assurance agreement wouldn't apply
2 because a competitive bidding process doesn't involve
3 CRES suppliers. It's a wholesale bid.

4 Q. Okay. So let me clarify this a little
5 further. Are you aware of AEP's Section 205
6 application pending at the FERC?

7 A. You'd have to be a bit more specific
8 about what you're referring to there.

9 Q. The application to change the capacity
10 rate under the RAA provision we've been discussing
11 from RPM to a cost-based rate.

12 A. I don't believe there's an application
13 that's pending. There was an application that was
14 filed and, my recollection is, rejected by FERC.
15 There's a complaint case that was initiated by AEP.

16 Q. So is it your understanding that the
17 Section 205 application that you're referring to as
18 being rejected, is that pending on rehearing?

19 A. I believe so, but there's a provision in
20 the stipulation that I think --

21 Q. I just want to make sure we're referring
22 to the same case. Then we can move on. Are we
23 referring to the same case?

24 A. I believe we are.

25 Q. Okay. So if the FERC changes its

1 direction on rehearing and ultimately grants
2 AEP Ohio's application, are you saying the result of
3 that case would not apply in the context of an SSO
4 auction?

5 A. Absolutely. Because, again, that
6 complaint deals with the state compensation
7 mechanism. If you're doing a competitive bid, it's a
8 wholesale transaction.

9 Q. Well, Mr. Murray, the complaint -- I
10 wasn't asking you about the complaint, so are you
11 saying the 205 case --

12 A. 205 section as well.

13 Q. -- the 205 case deals with the state
14 compensation mechanism?

15 A. That's my recollection.

16 Q. Which was filed first, the 205 case or
17 the Commission's December 2010 entry establishing the
18 state compensation mechanism?

19 A. My recollection is the 205 application
20 was submitted prior to a December entry in which the
21 Commission tried to clear up any doubt as to whether
22 or not there was a state compensation mechanism in
23 place.

24 Q. So it's your belief that a state
25 compensation mechanism existed in Ohio prior to

1 December 2010?

2 A. I think that's the Commission's belief.

3 Q. I'm not asking you about your
4 interpretation. I'm asking your belief. Are you
5 affirming your belief that a state compensation
6 mechanism existed in Ohio under the RAA prior to
7 December 2010?

8 A. The state of affairs prior to AEP
9 initiating the 205 application was that CRES
10 suppliers were charged the prevailing price for
11 capacity under RPM. So there was no need for the
12 State Commission to opine one way or the other
13 whether or not there was any state compensation
14 mechanism.

15 Now, my take on things is the Commission
16 issued the entry when AEP filed the 205 application
17 and raised a question of whether or not there was a
18 state compensation mechanism in place.

19 Q. So you're saying there was no need for
20 the PUCO to opine as to whether a state compensation
21 mechanism existed, but in your view it did exist
22 prior to December 2010; is that correct?

23 A. Not my view. My interpretation of what I
24 think the Commission said in the December 8th entry
25 was in its view it believed that the Commission had

1 spoken on an appropriate state compensation
2 mechanism.

3 MR. NOURSE: Your Honor, that's all the
4 questions I have. Thank you.

5 EXAMINER TAUBER: Thank you.

6 Mr. Howard, do you have any questions?

7 MR. HOWARD: No, thank you, your Honor.
8 No questions.

9 EXAMINER TAUBER: Mr. Yurick?

10 MR. YURICK: No, your Honor, thank you.

11 EXAMINER TAUBER: Mr. Kurtz?

12 MR. KURTZ: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Kurtz:

16 Q. Good afternoon, Mr. Murray. Do you have
17 your Exhibit KMM-11 in front of you?

18 A. Excuse me. Mr. Kurtz, you might need to
19 use a microphone, we've got a fan back here.

20 Q. Do you have that exhibit in front of you?

21 A. Which exhibit, please?

22 Q. 11.

23 MR. RANDAZZO: KMM-11, right, is what
24 you're referring to?

25 MR. KURTZ: Yes.

1 A. I have a document that was entitled
2 Exhibit KMM-11 that I believe has been marked as IEU
3 Exhibit 10.

4 Q. Okay. This is your MRO versus ESP
5 comparison spreadsheet.

6 A. This is a comparison that I updated to
7 reflect my understanding of the Commission's remand
8 order.

9 Q. So, for example, this takes out the POLR
10 revenues from the appropriate spots?

11 A. Yes.

12 Q. Okay. Does this exhibit -- this exhibit
13 is for CSP and Ohio Power individually?

14 A. Yes.

15 Q. Does this exhibit supersede your Exhibits
16 5 and 6, KMM-5 and 6?

17 A. I would not characterize it as
18 superseding the exhibits. As I discuss in my
19 testimony, the state of affairs at the time I filed
20 my direct testimony was unsettled with respect to
21 what the Commission may or may not have done under
22 the remand order. So I prepared Exhibits 5 and 6 to,
23 as I characterize it, book end the range of
24 possibilities.

25 What I've done in Exhibit KMM-11 is in

1 essence taken the results in KMM-5 and reflected my
2 understanding of the Commission's remand order. We
3 may have parties seek rehearing of the remand order,
4 and I was here earlier at the start of the
5 evidentiary hearing where at least it's apparent to
6 me that there's a difference of opinion between at
7 least some parties and the company about what they
8 believe the effect of the remand order is.

9 Q. This exhibit, No. 11, is your effort to
10 quantify the relative pricing provisions of an ESP
11 versus an MRO, or this ESP stipulation versus the
12 expected result of an MRO.

13 A. It quantifies those elements that are
14 known. There are -- as I discuss in my written
15 testimony, there are some additional economic impacts
16 that I believe need to be reflected in the overall
17 comparison. So this is the price-to-price
18 comparison.

19 Q. This is your quantification of the known
20 pricing provisions of the ESP stipulation versus the
21 expected results of MRO pricing.

22 A. That's correct.

23 Q. Okay. I'd like to ask you just how you
24 believe this exhibit should be used. You've
25 concluded that an expected MRO would be much less

1 expensive pricing than the ESP stipulation; is that
2 what this concludes?

3 A. That's one of the conclusions that can be
4 supported by the exhibit.

5 Q. Okay. Well, it does -- as I understand
6 your testimony, one of your big points is an MRO
7 would be cheaper, therefore, the ESP stipulation
8 fails the MRO versus ESP test. Did I miss something
9 there?

10 A. No. As I've testified, I think the
11 Commission has to conclude that the ESP is more
12 favorable than the MRO in order to approve it and I
13 think what Exhibit KMM-11 demonstrates is the
14 stipulation can't pass that test.

15 Q. Is it your position and understanding
16 that if this exhibit shows that an MRO is less
17 expensive than the ESP stipulation, that the
18 Commission cannot approve the ESP stipulation?

19 THE WITNESS: Could I have the question
20 reread?

21 (Record read.)

22 A. Again, the Commission is going to have to
23 base its decision on some evidence that's in the
24 record. The Commission could obviously look at the
25 information reflected in KMM-11 and reach a

1 different -- not agree with me, for example. But
2 based upon my analysis it fails the test, therefore,
3 the Commission has got several option, it can either
4 reject the stipulation. It could also I guess,
5 theoretically, modify the stipulation in a way that
6 it believed would produce an ESP outcome that was
7 more favorable than the MRO. The company would at
8 that point have the option to accept or not accept
9 those changes.

10 Q. Is it your belief that the Commission
11 cannot approve the ESP stipulation if this piece of
12 paper shows that the expected MRO is going to be less
13 expensive than the ESP stipulation?

14 A. It is my position that the Commission
15 can't approve a stipulation that's unlawful. So
16 there has to be something to support a conclusion
17 that the ESP is more favorable than the MRO. I have
18 not seen anything in the hearing to date that in my
19 judgment would support that conclusion.

20 Q. Let me ask you this again and ask you to
21 answer the question, if this piece of paper shows
22 that an MRO is one dollar less expensive than the ESP
23 stipulation, it's your belief that it would be
24 unlawful for the Commission to approve the
25 stipulation.

1 MR. RANDAZZO: I object. Asked and
2 answered.

3 EXAMINER TAUBER: Overruled. Mr. Murray,
4 please try to answer the question.

5 A. As I've indicated, this is my
6 quantification of the ESP versus MRO comparison. The
7 Commission is free to give this whatever weight it
8 thinks is appropriate. If it disagrees with my
9 recommendation, it may reach a different conclusion.

10 Q. So I guess what you're saying is that the
11 MRO versus ESP quantitative pricing test is only one
12 element in the Commission's approval process?

13 A. And as I've testified previously, there
14 are both quantitative and qualitative elements in the
15 comparison.

16 Q. So even if this spreadsheet shows that
17 the ESP stipulation is one dollar more expensive than
18 the MRO, there could be other terms and conditions of
19 the stipulation which tilt the balance in favor of
20 the stipulation; is that correct?

21 A. Yes. As I've testified, the Commission
22 might not accept what's in this exhibit.

23 Q. Okay. Let's look at your actual Exhibit
24 11, a few of the items. I just want to focus on the
25 Columbus & Southern portion of it. Do you have that

1 page 2 of 2, Exhibit 11?

2 A. Yes.

3 Q. You have a line in the ESP stipulation
4 enhanced service reliability rider of 62 cents per
5 megawatt-hour in the first year. Do you see that
6 line?

7 A. Yes.

8 Q. This is a provision of the ESP that costs
9 money that's not included in the MRO because, in your
10 opinion, such a rider could not be part of an MRO.

11 A. That's my understanding.

12 Q. Okay. Now, do you think the Commission
13 would approve an enhanced service reliability rider
14 if there were no benefits to it?

15 MR. RANDAZZO: I'll object to the
16 question. I don't know how Mr. Murray is going to
17 speculate about what the Commission might approve.
18 We've already seen the Commission approve things for
19 which there was no basis in law, so I object.

20 EXAMINER TAUBER: Mr. Murray, could you
21 please answer the question?

22 THE WITNESS: Could I have the question
23 reread?

24 EXAMINER TAUBER: Sure.

25 (Record read.)

1 A. It's certainly a possibility.

2 Q. Your spreadsheet does not show any
3 offsetting benefits, it only has the costs; is that
4 correct?

5 A. That's correct.

6 Q. Same with the gridSMART rider line 7
7 under the ESP stipulation, you show 37 cents a
8 megawatt-hour for each year of the ESP stipulation,
9 but you show no offsetting benefit.

10 A. That's correct.

11 Q. Line 10, the distribution investment
12 rider starting out at a dollar 80 per megawatt-hour.
13 Do you see that?

14 A. Yes.

15 Q. You have no distribution reliability
16 rider costs in the MRO based upon your belief that
17 such a rider would not be lawful in an MRO?

18 A. That's correct.

19 Q. Wouldn't it be possible for the utility
20 to file distribution rate cases if it were in an MRO?

21 A. Yes.

22 Q. So it could recover some of the same, if
23 not all the same, types of costs through distribution
24 rate cases in an MRO?

25 A. Not the rider that is reflected in the

1 stipulation.

2 Q. So the rider reflects incremental
3 distribution costs over some baseline year,
4 et cetera, but we're talking about distribution
5 expenses in the DIR rider, are we not?

6 A. My understanding of the DIR rider is it
7 reaches back and looks at investment, plant in
8 service after I think the year 2000. If you had a
9 rate case, there would be a date certain, plant in
10 service would be established as of a date certain and
11 a revenue requirement approved and there wouldn't be
12 the ability to -- so there wouldn't be a legal
13 ability, in my judgment, to set up a rider that
14 reached back and allowed the companies in essence
15 duplicative revenues for plant in service that's
16 recognized in rate base.

17 Q. I don't want to debate ratemaking with
18 you. But in a distribution rate case when you have a
19 date certain, it will be plant in service as of that
20 date and the plant could be 30, 40, 20, 15 years old
21 or brand new reflected in the distribution rate case;
22 isn't that correct?

23 A. Yes.

24 Q. And there's no prohibition against
25 distribution rate cases in an MRO, is there?

1 A. That's my recollection.

2 Q. And you've made no provision for possible
3 distribution rate cases in your comparison, have you?

4 A. Again, no, but I think as we're aware of
5 there are, for Ohio Power Company and Columbus
6 Southern Power Company, there are rate cases pending
7 as we speak.

8 Q. Let's look at the last -- your last line,
9 last column I guess, the June 2015 through May 2016
10 expected results of an MRO versus the ESP stipulation
11 comparison. Do you see that column?

12 A. Yes.

13 Q. Several witnesses have prepared exhibits
14 similar to this but none of those had a column for
15 this time period, did they?

16 A. That's my recollection.

17 Q. So you're the only witness who did a
18 comparison for the June '15 to May '16 time frame?

19 A. That's my recollection.

20 Q. Now, under the ESP stipulation at this
21 point in time the utilities are not expected to own
22 any power plants, they're expected to have divested
23 their generation by this period; isn't that correct?

24 A. Provided other conditional provisions of
25 the stipulation happen, yes.

1926

1 Q. All right. Now, in the last year of this
2 MRO, in the fifth year of this MRO, on line 26 we see
3 that the ESP portion is 90 percent in year 1,
4 80 percent in year 2, 70, 66 percent, and in the
5 final year of the MRO, in the final year of your
6 analysis, you're assuming that 56 percent of the
7 power supplied to load would come from the ESP legacy
8 pricing, correct?

9 A. The mathematical weighting reflects
10 56 percent at the legacy ESP price.

11 Q. Now, you're assuming 56 percent pricing
12 at the legacy generation asset price when, in fact,
13 the utilities would not own any generation at that
14 point in time.

15 A. That's correct.

16 Q. So the power couldn't really come from
17 power plants that utilities don't own at legacy
18 price, could it?

19 A. My understanding of the MRO statute is it
20 requires a blending of a bid price and an ESP price
21 and whether or not the utility owns any generation is
22 irrelevant.

23 Q. Okay. In the real world if the utility
24 had to provide auction -- had to provide SSO load in
25 the final year of an MRO and it didn't own any power

1 plants, it would have to buy that power, wouldn't it?

2 MR. CONWAY: Could I have the ESP -- I'm
3 sorry, could I have the question reread?

4 MR. KURTZ: Let me rephrase it.

5 Q. In the real world in the fifth year of an
6 MRO for a utility that doesn't own any power plants
7 it would have to buy the power to serve the SSO load,
8 wouldn't it?

9 A. That's one possibility.

10 Q. You understand that the MRO statute
11 allows for four additions to the legacy pricing,
12 you're aware of that, fuel, environmental,
13 alternative energy, and purchased power?

14 A. I believe I testified earlier that I was
15 familiar that it allowed for fuel. I would have to
16 go back and refresh my memory on all the provisions
17 in the statute.

18 Q. I'll read you the relevant provision.
19 4928.142(D)(1), for any one or more of the following
20 costs as reflected in that most recent standard
21 service offer price, one, the EDU's prudently
22 incurred cost of fuel -- I'm paraphrasing just a tad.
23 If you want to look at the statute, I'll show it to
24 you -- prudently incurred purchased power costs,
25 three, prudently incurred costs of satisfying the

1 supply and demand portfolio requirements in the state
2 including, but not limited to, renewable energy and
3 energy efficiency, four, prudently incurred costs to
4 comply with environmental laws and regulations.

5 Let me go back to my question. Couldn't
6 a utility adjust the legacy ESP pricing for prudently
7 incurred costs of purchased power?

8 MR. RANDAZZO: I object. Form of the
9 question. The utility can't adjust anything.

10 MR. KURTZ: The Commission adjusts.

11 EXAMINER TAUBER: Thank you.

12 A. I think the key word in your question is
13 the use of the term "prudently incurred." If a
14 utility is statutorily obligated to blend a legacy
15 ESP price for five years and turns around and divests
16 its generation so that its exposure in order to
17 provide a portion of the load that it's required to
18 be priced at the legacy ESP price is unhedged.

19 I think there's an open question as to
20 whether or not that, in fact, is a prudent course of
21 behavior. We actually have a history here in Ohio,
22 not completely analogous, but certainly similar where
23 if you go back into 2003-2004 time period Monongahela
24 Power in its transition plan had a provision that
25 allowed it to go to market early for commercial and

1 industrial customers.

2 There was a skirmish over what that meant
3 and its obligations I won't go over here, but my
4 recollection is it was a finding by this Commission
5 that under certain circumstances the decision to
6 leave its standard service offer obligation unhedged
7 in that particular set of circumstances was
8 imprudent.

9 Now, if you follow history, that case
10 eventually made its way to federal court and
11 ultimately was resolved by stipulation, but, again,
12 it doesn't strike me as a reasonable course of action
13 that if you've got an obligation to provide a portion
14 of the load at a default price, why you would leave
15 yourself unhedged in that position. And the question
16 of whether or not we're required to blend for the
17 full five years has been tested in the Duke MRO case
18 that I talked about earlier.

19 Q. So you believe that in the final -- in
20 the fifth year of an MRO for a utility that doesn't
21 own any generation, that if it had to buy power to
22 serve the SSO load to keep the lights on, that that
23 purchase may not be prudent?

24 MR. RANDAZZO: I object. There's no
25 foundation for anybody buying power to keep the

1 lights on. We're way far away from any of the
2 scenarios that are addressed by Mr. Murray's
3 testimony.

4 MR. KURTZ: This is exactly his scenario
5 in the fifth year. He's assuming that in the fifth
6 year of an MRO 56 percent of the energy sold to the
7 SSO load would be at the legacy ESP pricing even
8 though the utility doesn't own any power plants.
9 Now, there's a provision in the MRO statute that
10 allows the utility in this circumstance to recover
11 purchased power costs.

12 The point I'm getting to is that there's
13 no line item for purchased power costs in the MRO and
14 if there were it would be an offsetting adjustment to
15 the analysis that the witness did, in fact, make.

16 MR. RANDAZZO: Well, your Honor, that's
17 evidence that OEG can put on. That's not evidence
18 that's supported -- that scenario that's being
19 discussed here has no foundation whatsoever in the
20 record.

21 MR. KURTZ: Your Honor, I was responding
22 to counsel's objection that the question had no
23 foundation. I think this is exactly what it's
24 leading up to.

25 EXAMINER TAUBER: The objection is

1 overruled.

2 Please continue, Mr. Kurtz.

3 Q. (By Mr. Kurtz) Do you think it may be
4 imprudent for a utility which owns no power plants in
5 the fifth year of an MRO to go out and purchase power
6 to serve the SSO load and, therefore, maybe that
7 purchase would not be reflected in an MRO?

8 A. What I've testified is given that that
9 obligation is known up front, I think a utility
10 leaving itself unhedged as to that position raises
11 questions of whether or not that decision is prudent.

12 Q. Let's assume the Commission found that
13 the purchase was prudent. There's no cost line item
14 in your MRO to reflect that purchased power cost, is
15 there?

16 A. I would presume that in order for the
17 Commission to find that that decision was prudent, it
18 would have to conclude that the results are better
19 than the results otherwise would be. So I think for
20 the point of my comparison it would actually make the
21 results worse.

22 MR. KURTZ: Thank you, your Honor. Those
23 are all my questions.

24 EXAMINER TAUBER: Thank you.

25 Mr. Margard?

1 MR. MARGARD: No questions. Thank you,
2 your Honor.

3 EXAMINER TAUBER: Mr. Randazzo, redirect?

4 MR. RANDAZZO: If I could just have two
5 seconds.

6 EXAMINER TAUBER: I'll actually give you
7 five minutes. Let's go off the record.

8 (Recess taken.)

9 EXAMINER TAUBER: Let's go back on the
10 record.

11 Mr. Randazzo, on redirect?

12 MR. RANDAZZO: Thank you, your Honor.
13 Just a couple things.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Randazzo:

17 Q. Mr. Murray, during the cross-examination
18 of Mr. Nourse you got into a discussion about some of
19 the components of the product that was part of the
20 auction for generation supply, standard service offer
21 generation supply in the case of Cleveland Electric
22 Illuminating, Toledo Edison, and Ohio Edison. Do you
23 recall that discussion?

24 A. Yes.

25 Q. And in the course of discussing that

1 subject you indicated that the master supply
2 agreement and the definitions therein excluded a
3 percentage of income payment plan customers. Did I
4 correctly hear your testimony?

5 A. Yes, you did.

6 Q. And do you know why those customers were
7 excluded?

8 A. In the stipulation that was reached in
9 that case there was a provision that provided that
10 PIPP customers would be served at a discount relative
11 to the auction price that prevailed in the
12 competitive bidding process. So that discount was an
13 additional benefit that could be quantified and
14 valued in the ESP versus MRO.

15 Q. And if you know, are there opportunities
16 in the law to competitively source for percentage of
17 income payment customers?

18 A. Yes. My understanding is the Ohio
19 Department of Development has statutory authority
20 that allows them to bid out PIPP customers either on
21 an individual utility basis for statewide.

22 Q. Now, during your cross-examination by
23 Mr. Nourse also you were shown an interrogatory
24 response that's marked as AEP Exhibit No. 15. Do you
25 have that in front of you?

1 A. Yes.

2 Q. Were there other discovery responses that
3 were related to the subject that's covered by AEP
4 Exhibit 15 and the discussion that you had with
5 Mr. Nourse regarding the statement by
6 Mr. Munczinski --

7 A. Yes.

8 Q. -- on September 7th? The answer?

9 A. Yes, there were.

10 MR. RANDAZZO: Your Honor, at this time I
11 would have marked for identification purposes IEU
12 Exhibit No. 13.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Murray, I've handed you what has been
15 marked as IEU Exhibit No. 13, at the top it has
16 Columbus Southern Power Company and Ohio Power
17 Company's Response to FirstEnergy Solutions'
18 Discovery Request Twenty-First Set. Do you have the
19 same document I do?

20 A. Yes, I do.

21 Q. And it refers to interrogatory
22 STIP-FES-RFA-21-002. Is that what you're document
23 shows?

24 A. Yes, it does.

25 Q. And by whom was this response prepared?

1 that isn't paid is picked up and recovered from other
2 customers through the universal service fund. So
3 ultimately the beneficiaries of that provision, you
4 know, are actually the remaining customers of
5 FirstEnergy.

6 Q. So you agree that PIPP customers do not
7 benefit directly by that provision?

8 A. Well, again, a PIPP customer pays a --
9 based upon their income. It's possible that you
10 might get to a result where their income matches the
11 actual bill or their ability to pay matches their
12 actual bill so they would obviously benefit.

13 Q. But their expected to pay based on a
14 percentage of income doesn't change as a result of
15 the percentage discount you referenced, does it?

16 A. Yes. That's my testimony. And, again,
17 as I indicated, the beneficiaries ultimately are
18 actually the other customers.

19 Q. Okay. Just to be clear, I asked you if
20 it does, the bill of the PIPP customer doesn't
21 change, and you answered "yes." Yes, it doesn't
22 change?

23 A. The bill of a PIPP customer -- the
24 portion of its bill that a PIPP customer pays is
25 capped based upon their income. So the discount

1 that's provided for under the stipulation provided a
2 benefit in that it may ultimately lower the portion
3 of a PIPP customer's bill that's subsidized by other
4 customers.

5 Q. So it benefits other non-PIPP customers,
6 correct?

7 A. Yes.

8 MR. NOURSE: Thank you. That's all.

9 EXAMINER TAUBER: Thank you.

10 Mr. Howard?

11 MR. HOWARD: No, thank you, your Honor.

12 EXAMINER TAUBER: Mr. Yurick?

13 MR. YURICK: No questions, your Honor,
14 thank you.

15 EXAMINER TAUBER: Mr. Kurtz?

16 MR. KURTZ: No questions.

17 EXAMINER TAUBER: Mr. Margard?

18 MR. MARGARD: No, thank you.

19 EXAMINER TAUBER: At this time IEU has
20 moved for the admission of Exhibits 9A, 9B, 10, and
21 13. Are there any objections to IEU exhibits?

22 (No response.)

23 EXAMINER TAUBER: Hearing none, IEU
24 Exhibits 9A, 9B, 10, and 13 shall be admitted into
25 the record.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MR. NOURSE: And, your Honor, AEP Ohio
3 moves for admission of Exhibits 12, 13, 14, and 15 we
4 used during cross-examination.

5 EXAMINER TAUBER: Are there any
6 objections to AEP Ohio Exhibits 12, 13, 14, and 15?

7 (No response.)

8 EXAMINER TAUBER: Hearing none, AEP Ohio
9 Exhibits 12, 13, 14, and 15 shall be admitted into
10 the record.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER TAUBER: You may be excused.
13 Thank you.

14 MR. SATTERWHITE: Your Honor.

15 EXAMINER TAUBER: Yes.

16 MR. SATTERWHITE: AEP has a couple of
17 cleanup matters, I think it might help for some stuff
18 from discovery placed in the record. This morning I
19 passed around a summary of some of the discovery
20 matters we intended to introduce at this time so all
21 the parties could see it, I'd like to mark those now.
22 Yeah.

23 EXAMINER TAUBER: We can do that.

24 MR. KUTIK: May we go off the record for
25 a moment?

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1 EXAMINER TAUBER: Sure. Let's go off the
2 record first.

3 (Discussion off the record.)

4 EXAMINER TAUBER: Let's go back on the
5 record.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 MR. SATTERWHITE: Thank you, your Honor.
8 The first document I have labeled AEP Exhibit 16 is a
9 FirstEnergy Solutions Corp. Supplemental Response to
10 Columbus Southern Power and Ohio Power Companies'
11 First Set of Discovery, and in particular I have
12 attached a cover page for point of reference, and
13 what we're seeking to add to the record are the
14 Responses to Request for Admissions No. 2 and No. 3.
15 I'll point out that in this document the answer to 3
16 carries over to the following page so 4 and 5 are not
17 intended to be put into the record.

18 EXAMINER TAUBER: So just Request for
19 Admissions 2 and 3?

20 MR. SATTERWHITE: Yes. I wanted to
21 represent what was provided by FES.

22 AEP Exhibit No. 17 that I've marked, it's
23 the Office of the Ohio Consumers' Counsel's Responses
24 and Objections to CSP and OP's First Set of
25 Discovery, I've provided a cover page and then page

1 29 to point out it's a request for admissions, but
2 what I'd like to admit is their request or the
3 responses to request for admissions 2, 3, and 4 that
4 appear on page 30 of that document.

5 And then finally what I've marked as AEP
6 Exhibit No. 18, it's the Appalachian Peace and
7 Justice Network's responses to Columbus Southern
8 Power and Ohio Power's Second Set of Interrogatories.
9 For this I'm seeking admission of the response to
10 request for admission No. 2 which appears on the
11 second page, I've also included a cover page and the
12 page where that request for admission appears.

13 So just so I get all the cleanup matters
14 out of the way, I also, to the extent the Bench
15 thinks it's necessary, I know a number of times we
16 cited to Case 10-388, the FirstEnergy SSO, I referred
17 to it the other day talking to Mr. Bowser, I think we
18 just had some comments on the PIPP findings in there,
19 to the extent the Bench thinks it's necessary I think
20 it would be appropriate to take administrative notice
21 of the opinion and order in that case so that people
22 can cite to it on brief if they need to.

23 And the final point was earlier the
24 company asked the Bench their preference on marking
25 the stipulation, the detailed implementation plan,

1 and we marked those as Joint Exhibits 1 and 2. I
2 just request that be admitted into evidence.

3 EXAMINER TAUBER: Okay. Are there any
4 objections to AEP Exhibits 16, 17, and 18 which are
5 the supplemental responses?

6 MR. KUTIK: Your Honor, I think I want to
7 make sure that it's clear on the record that Exhibit
8 16 will only be admitted for the purpose of the
9 response to request for admission No. 2 and request
10 for admission No. 3. The reason I say that is
11 because it does include other responses including the
12 partial response to No. 5. So I want to make sure
13 for fairness that the parties are on notice that the
14 only thing that can be cited from this, if anything,
15 is the request to responses 2 and 3.

16 EXAMINER TAUBER: Thank you. We'll note
17 that for AEP Ohio Exhibit No. 16 it's just request
18 for admission 2 and 3, and then for 17 it's just
19 request for admission 2, 3, and 4, and on AEP Ohio 18
20 it's just request for admission number 2.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER TAUBER: Mr. Randazzo.

23 MR. RANDAZZO: I have nothing on the
24 exhibits that relate to the admissions, it was with
25 regard to the request that the Commission take

1 administrative notice of the opinion and order in the
2 FirstEnergy ESP cases.

3 We've noted earlier that case was a
4 product of a settlement, that settlement specifically
5 stated that the settlement would not be cited as
6 precedent in any other case. We happen to believe
7 that that means something that's important and, as a
8 result, to the extent the Commission would take
9 administrative notice of that we would also ask that
10 the Commission take administrative notice of that
11 language in the summary.

12 EXAMINER TAUBER: Thank you.

13 MR. ETTER: OCC joins in that as well,
14 your Honor.

15 MR. KUTIK: As does FES.

16 MR. SATTERWHITE: And I believe the
17 stipulation in that case was already put in the
18 record with my cross of Mr. Bowser so that would
19 already be in there for a citation. I think the
20 point was it's been referred to multiple times, it's
21 underlying a lot of the analysis, and if the Bench
22 doesn't think it's necessary, then we can just cite
23 it's a valid Commission order and we just cite to it.

24 I just want to be extra sure that we're
25 able to round out the parsing that's been provided in

1 this in the briefs so the Commission can have the
2 full benefit and the parties can have the full
3 benefit in their briefs using that.

4 EXAMINER TAUBER: As we have in other
5 cases we'll take administrative notice of that with
6 the caveat that Mr. Randazzo brought forward.

7 MR. RANDAZZO: Thank you, your Honor.

8 EXAMINER TAUBER: And then at this time
9 we still have AEP Ohio Exhibits 16, 17, and 18 with
10 the notations out. Are there any objections to
11 those? Hearing none, AEP Ohio Exhibits 16, 17, and
12 18 shall be admitted into the record.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER TAUBER: Mr. Oliker.

15 MR. SATTERWHITE: Your Honor, I'm sorry,
16 I want to make sure, I don't know if you're going to
17 do it after this or not, but Joint 1 and 2 is the
18 third cleanup matter I brought up.

19 EXAMINER TAUBER: Thank you. Joint
20 Exhibit 1, which is the stipulation, is there any
21 objection to that?

22 MR. RANDAZZO: Your Honor, we previously
23 moved to dismiss based upon the failure of the
24 parties to the settlement, AEP specifically which has
25 a statutory burden of proof, to provide any support,

1 evidentiary support, for the application to which the
2 stipulation is connected, and subject -- you took
3 that ruling under advisement and I think that the
4 appropriate thing to do would be in recognition of
5 taking that ruling under advisement to take this
6 request under advisement to the same extent.

7 EXAMINER TAUBER: We'll take both of
8 those under advisement at this point in time. So
9 with Joint Exhibit 1 and 2 being taken under
10 advisement, we'll move on to Mr. Olikier.

11 MR. OLIKER: Your Honor, I believe you
12 and the reporter are the only two people who have
13 copies of this.

14 MR. RANDAZZO: Maybe they want it that
15 way.

16 MR. OLIKER: I'd like to mark this as
17 IEU-Ohio Exhibit 14. These are admissions of the
18 signatory parties. In particular, your Honor, these
19 are admissions of the Natural Resource Defense
20 Council, Ohio Environmental Council, Environmental
21 Law and Policy Center, AEP Retail Energy Partners,
22 LLC, Paulding Wind Farm, II, LLC, the Association of
23 Independent Colleges and Universities of Ohio, Duke
24 Energy Retail Sales, LLC, the City of Hilliard, Ohio,
25 the City of Grove City, Ohio, the Kroger Company, the

1 OMA Energy Group, the Ohio Hospital Association, the
2 Retail Energy Supply Association, EnerNOC, Inc.,
3 Exelon Generation Company, LLC, Constellation
4 NewEnergy, Inc., and Constellation Energy Commodities
5 Group, Inc., and PJM Power Providers Group.

6 And particularly, your Honor, we are
7 moving for the admission of the following statement,
8 "Admit that on September 7th, 2011, You did not have
9 information from AEP-Ohio that the RPM-priced
10 capacity set aside allocation in Appendix C of the
11 Stipulation had been fully awarded for any customer
12 class.

13 Each these parties has admitted to the
14 truth of this statement, and I would move for the
15 admission of those statements, particularly in this
16 exhibit.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 EXAMINER TAUBER: Are there any
19 objections to IEU Ohio's Exhibit No. 18 which is
20 the -- or 14, excuse me.

21 MR. NOURSE: I thought it was 14.

22 EXAMINER TAUBER: Excuse me. 14.

23 MR. NOURSE: I'm sorry, maybe I
24 misunderstood. Is it the whole document including
25 all the attachments is what is being sought for

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1 admission?

2 MR. OLIKER: Steve, we are moving the
3 exhibit but it's limited to that admission in each of
4 the sets of responses.

5 MR. NOURSE: So, for example, the
6 attachment 14, there's other materials which I think
7 includes a typo that was brought out earlier in the
8 record, those are extraneous and they're not being
9 admitted as part of this exhibit?

10 MR. OLIKER: Correct, just the admission.

11 MR. NOURSE: Well, I'm not sure why we
12 can't prepare an exhibit that only includes the
13 materials sought for admission, your Honor. That's
14 what I would suggest.

15 MR. OLIKER: You will also notice all the
16 admissions are on the same page typically in their
17 response.

18 MR. NOURSE: Okay. I guess if it's clear
19 in the record that those other matters are not being
20 admitted, then we're fine with that clarification.

21 EXAMINER TAUBER: We'll note the
22 clarification. Are there any objections to IEU-Ohio
23 Exhibit 14?

24 (No response.)

25 EXAMINER TAUBER: Hearing none, IEU-Ohio

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1 Exhibit No. 14, the factual admissions made in
2 response to the noted discovery request, shall be
3 admitted into the record.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER TAUBER: Are there any other
6 matters?

7 MR. KUTIK: Your Honor, are you prepared
8 at this time to discuss the schedule for the rest of
9 the case?

10 EXAMINER TAUBER: Yes. Let's go off the
11 record and discuss it.

12 (Discussion off the record.)

13 EXAMINER TAUBER: Let's go back on the
14 record. At this point in time the hearing shall be
15 adjourned until further notification is set. Thank
16 you.

17 MR. KUTIK: Before we go off the record,
18 so it's the understanding that staff and AEP will be
19 filing rebuttal testimony by 4 or 5 o'clock tomorrow
20 afternoon.

21 EXAMINER TAUBER: Correct, as noted off
22 the record. Thank you, Mr. Kutik.

23 Let's go off the record.

24 (Thereupon, the hearing was adjourned at
25 4:21 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, October 20, 2011, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(MDJ-3912)

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Summary: Transcript Transcript of Columbus Southern Power Company and Ohio Power Company hearing held on 10/20/11 - Vol XI electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.